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Alfred Lee Alfred, II, et al.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ARTHUR LEE ALFRED, II, et al.,
Plaintiffs,
v.
WALT DISNEY PICTURES,,
Defendant.

Case No. 2:18-CV-08074-CBM-ASx

DISCOVERY MATTER

**NOTICE OF MOTION AND
JOINT STIPULATION RE:
PLAINTIFFS' MOTION TO
COMPEL DISCOVERY**

Judge: Hon. Alka Sagar
[referred by Hon. Consuelo B.
Marshall for discovery]
Hearing Date: April 19, 2022
Time: 10:00 AM
Location: Courtroom 540

This Motion is made pursuant to the
conference of counsel pursuant to
L.R. 37-1, which occurred March 9,
2022

Discovery Cutoff Date: June 15, 2022
Pretrial Conference Date: Jan. 9, 2023
Trial Date: Feb. 7, 2023

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that, on April 19, 2022, at 10:00 a.m., or on such
 3 other date and time convenient to and ordered by the Court, the undersigned shall
 4 appear before the Honorable Alka Sagar in Courtroom 540, and then and there
 5 Plaintiffs Arthur Lee Alfred II and Ezequiel Martinez, Jr. (“Plaintiffs”) will, and
 6 hereby do, move this Court for an order compelling Defendant to provide further
 7 documents and information in response to Plaintiffs’ pending discovery requests.
 8 Specifically Plaintiffs request an Order compelling:

- 9 1. Production of documents responsive to Requests for Production Nos. 23-29;
 10 2. Further responses to Interrogatory Nos. 11-15.

11 This Motion is based on this Notice, the concurrently filed Joint Stipulation
 12 on Plaintiffs’ Motion to Compel, as well as the pleadings, records, and files therein,
 13 the complete files and records in this action, any supplemental memoranda timely
 14 filed before the hearing, and on such other oral or documentary evidence as may be
 15 presented at the hearing of this Motion.

16 This Motion is made pursuant to the conference of counsel pursuant to L.R.
 17 37-1 which took place on March 9, 2022.

18 Dated: March 24, 2022

19 Respectfully submitted,

20 By: /s/ Patrick M. Arenz

21 **ROBINS KAPLAN LLP**

22 Patrick M. Arenz (pro hac vice)

23 Brandon J. Pakkebier (pro hac vice)

24 **LOWE & ASSOCIATES, PC**

25 Steven T. Lowe, Esq.

26 Aleksandra Hilvert, Esq.

27 *Attorneys for Plaintiffs*

28 *Arthur Lee Alfred, II, et al.*

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PRELIMINARY STATEMENTS

The parties jointly request a discovery hearing before Your Honor to resolve three discovery disputes. Plaintiffs Arthur Lee Alfred, II and Ezequiel Martinez, Jr. (“Screenwriters”) conferred with Defendant Walt Disney Pictures (“Disney” or “WDP”) first on February 16, 2022. Following that call, counsel for the Screenwriters sent a formal letter under Local Rule 37-1 to Disney’s counsel on February 25, 2022 requesting an additional meet and confer. Pakkebie Decl. Ex. 1. Disney replied with a letter on February 28, 2022. Pakkebie Decl. Ex. 2. The parties met and conferred on March 9, 2022, but were unable to reach agreement. The issues are now ripe for Court adjudication. A copy of the operative scheduling order in this matter, pursuant to Local Rule 37-2, is attached to this stipulation. Pakkebie Decl. Ex. 3.

I. Plaintiffs’ Preliminary Statement

The Plaintiff Screenwriters sued Disney for copyright infringement over Disney’s Pirates of the Caribbean film. After the conclusion of the first phase of discovery, Judge Marshall denied Disney’s motion for summary judgment in which Disney sought to establish that its film is not substantially similar to the Screenwriters’ screenplay. The parties are now completing discovery on other issues, like damages and Disney’s affirmative defenses. Yet the parties have been unable to resolve three discovery disputes on these subjects.

First, Disney objects to discovery and refuses to produce documents about financial information for the four Pirates of the Caribbean sequel films. But this information is relevant—certainly for discovery purposes—because the Screenwriters seek actual damages for a hypothetical license and Disney’s indirect profits. Under the first theory, the Screenwriters will offer expert testimony that a hypothetical license here would include a royalty for any sequel films, as is standard for writers in the industry. Plaintiffs will require financial information about the sequels to calculate that license/royalty. The Screenwriters will likewise

1 offer expert testimony that the sequel films would not exist but-for the original film,
 2 and thus a causal nexus exists to seek Disney's indirect profits. The Court should
 3 overrule Disney's relevance objection.

4 Second, Disney objects to discovery of its financial information related to
 5 the original film that pre-dates 2014 (three years before the action was filed, in
 6 November of 2017). Here again, Disney's relevance objection tries to use discovery
 7 to limit the Screenwriters' ability to prepare their case on the merits. Hollywood
 8 accounting is notoriously complex and questionable. In order for the Screenwriters
 9 and their experts to analyze and evaluate the information Disney provided from
 10 2014 on, they need access to similar information from 2003-2014. Only then can
 11 they verify that no dispute exists over how Disney has allocated expenses and costs.
 12 This information is also relevant to Disney's equitable estoppel defense. The degree
 13 and specific amount that Disney has profited off the Pirates of the Caribbean film is
 14 relevant to Disney's claim that it has suffered a "consequent loss," as the Supreme
 15 Court requires.

16 **II. Defendant's Preliminary Statement**

17 Plaintiffs claim that Walt Disney Pictures' *Pirates of the Caribbean: The*
 18 *Curse of the Black Pearl* ("Curse" or "Film")—a 2003 motion picture based on
 19 Disney's Pirates of the Caribbean theme park ride—infringed Plaintiffs' copyright
 20 in their 2000 screenplay (the "Screenplay"), also titled *Pirates of the Caribbean* and
 21 also based on the Disney ride.

22 Through this motion, Plaintiffs pursue highly invasive discovery of financial
 23 information regarding claims Plaintiffs do not make or cannot make as a matter of
 24 law. Courts are very wary of this tactic, explaining that financial discovery into
 25 non-infringing works threatens to become a "fishing expedition," *Salinas v. Proctor*
 26 *& Gamble Co.*, 2020 WL 8455187, at *2 (C.D. Cal. Dec. 4, 2020), and that it is
 27 presumptively appropriate for courts to *deny* discovery into matters occurring
 28 before an applicable limitations period, *Oppenheimer Fund, Inc. v. Sanders*, 437

1 U.S. 340, 351–52 (1978). Plaintiffs do not meet their burden as to either category
2 in issue.

3 *First*, Plaintiffs seek financial information regarding the four *Pirates of the*
4 *Caribbean* sequel movies.¹ But Plaintiffs *do not allege* the Sequels infringe their
5 Screenplay. Though this was originally asserted, *see* Decl. of Juliana Yee (“Yee
6 Decl.”) Ex. A [Compl., Dkt. 1] ¶ 52, Plaintiffs opted to drop this contention in their
7 amended complaint, and confirmed during the meet and confer that they make no
8 such claim. Yee Decl. ¶ 8. Plaintiffs thus expressly walked away from any
9 damages claim based on the Sequels.

10 Surprisingly and inconsistently, Plaintiffs now claim that financial
11 information regarding the Sequels is relevant to a “hypothetical license” they say
12 they would have received had WDP hypothetically bought their Screenplay before
13 *Curse* was produced. In particular, Plaintiffs argue that, in this hypothetical
14 scenario, WDP would have given them an agreement like one they had for a
15 separate (never made) movie project called *Red Hood*, which Plaintiffs assert
16 provided them royalties for sequels. Plaintiffs did not mention the *Red Hood*
17 agreement during the meet and confer. Had they done so, WDP would have
18 explained that their theory fails because Plaintiffs have overlooked a critical
19 condition for sequel royalties: the *Red Hood* agreement makes clear (in language
20 Plaintiffs gloss over) that to get royalties on sequels, Plaintiffs had to receive
21 “Screenplay by” or “Written by” credit—and Plaintiffs have zero evidence (and
22 indeed, do not even argue) that in this hypothetical scenario in which they had a
23 similar agreement with WDP, Plaintiffs would have received such “Screenplay by”
24 or “Written by” credit for *Curse*. They did not and would not have, even under
25 their hypothetical scenario.

26 Plaintiffs’ alternative relevance argument—that profits on the Sequels are

27 ¹ *Pirates of the Caribbean: Dead Man’s Chest* (2006); *Pirates of the Caribbean: At*
28 *World’s End* (2007); *Pirates of the Caribbean: On Stranger Tides* (2011); and
Pirates of the Caribbean: Dead Men Tell No Tales (2017) (collectively “Sequels”).

1 “indirect profits” from the infringement Plaintiffs assert regarding *Curse*—fails
2 because Plaintiffs have not shown, as they must, that there are *any* similarities
3 between their Screenplay and the Sequels.

4 *Second*, Plaintiffs seek financial information for *Curse* going back to its
5 release in 2003. But Plaintiffs opted to wait fourteen years, until November 2017,
6 to file suit. They thus forfeited a claim for any of WDP’s profits more than three
7 years before they sued. “No recovery may be had for infringement in earlier
8 years.” *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663, 667 (2014).

9 Plaintiffs try to circumvent the Supreme Court’s rule with the speculative and
10 meaningless theory that “Hollywood accounting” makes it impossible to accept the
11 information WDP provided for the period of 2014 to the present. Not surprisingly,
12 Plaintiffs have not identified any accounting irregularity in the information WDP
13 has provided, nor have they explained how producing summary-level data showing
14 revenue, expenses, or profit totals could plausibly enable an expert to verify pre-
15 2014 data.

16 WDP’s equitable estoppel affirmative defense certainly does not justify
17 financial discovery outside the limitations period. In asserting this defense, WDP
18 does not intend to rely on any evidence outside the limitations period to show
19 consequent loss. Thus, there is no justification for Plaintiffs’ to obtain financial
20 information outside the limitations period.

21 WDP has fully responded to all the discovery Plaintiffs are entitled to
22 receive. WDP produced documents for the vast majority of requests that Plaintiffs
23 served, including over 64,000 pages of documents. (Plaintiffs, in contrast,
24 produced just over 3,000 pages.) Specifically, WDP produced information about
25 the revenues, expenses, costs, and profits for *Curse* within the limitations period.
26 Plaintiffs undoubtedly perceive tactical advantages from requiring WDP to produce
27 yet more financial information, but they have wholly failed to meet their burden to
28 obtain such additional information.

ISSUES IN DISPUTE

There are two issues upon which the parties seek the Court's resolution: (1) financial information for the *Pirates of the Caribbean* sequel movies (Disney's responses to Interrogatory Nos. 12 & 14 and to Requests for Production Nos. 26-29; and (2) pre-2014 financial information (Disney's responses to Interrogatory Nos. 11-15 and RFP Nos. 23-29).

III. Issue 1: Sequel Film Financial Information

A. Requests and Responses

Plaintiffs served two interrogatories and four requests for production directed toward the *Pirates of the Caribbean* sequel movie financials. Disney objected to these discovery requests except to the extent they involve *Pirates of the Caribbean: Curse of the Black Pearl* (the first film). Disney incorporated its Prefatory Statement, General Objections, and Objections to Definitions and Instructions in each response. Pursuant to Local Rule 37-2.1, those components, as well as the text of each interrogatory or request for production, and response, are set forth below.

Prefatory Statement (Interrogatories):

1. By responding to Plaintiffs' First Set of Interrogatories, WDP does not waive any privilege or objection that may be applicable to: (a) the use, for any purpose, by Plaintiffs of any information or documents sought by Plaintiffs or provided in response to an Interrogatory; (b) the admissibility, relevance, or materiality of any of the information or documents to any issue in this case; or (c) any demand for further responses involving or relating to the subject matter of any of the Interrogatories.

2. WDP's responses are based on information reasonably available to WDP as of the date of these responses. WDP's investigation is continuing and ongoing. Subject to and without waiving any of its objections set forth herein, WDP reserves the right to alter or to supplement these responses as additional information

1 becomes known to it, but undertakes no obligation to do so beyond the obligations
 2 imposed by the Federal Rules of Civil Procedure, the Local Rules, and Orders of
 3 this Court.

4 *General Objections (Interrogatories):*

5 The following General Objections apply to and are incorporated into each and
 6 every response to each and every specific Interrogatory, whether or not such
 7 General Objections are expressly incorporated by reference in such response.

8 1. WDP objects to each and every Interrogatory, definition, and instruction to
 9 the extent that it attempts to impose obligations inconsistent with or in addition to
 10 those required by the Federal Rules of Civil Procedure, the Local Rules or Orders
 11 of this Court, or any other applicable authority.

12 2. WDP objects to each and every Interrogatory, definition, and instruction as
 13 overly broad, unduly burdensome, and not proportional to the needs of this case to
 14 the extent that it is not reasonably limited in scope, or seeks information neither
 15 relevant to any issue in this case nor reasonably calculated to lead to the discovery
 16 of admissible evidence, particularly to the extent that compliance would force WDP
 17 to incur a substantial expense that outweighs any likely benefit of the discovery.

18 3. WDP objects to each and every Interrogatory, definition, and instruction to
 19 the extent that it lacks any reasonable time limitation, including but not limited to,
 20 because it poses an undue burden on WDP. To the extent WDP agrees to produce
 21 information in response to a specific Interrogatory, it will do so on a timeframe that
 22 is reasonable, taking into account the nature and scope of the individual
 23 Interrogatory and what is proportional to the needs of this case. Unless otherwise
 24 specified—as WDP has, for example, with respect to Interrogatories seeking
 25 financial information—WDP limits its responses to the timeframe of October 1,
 26 1999 to June 28, 2003 (the “Relevant Timeframe”).

27 4. WDP objects to each and every Interrogatory, definition, and instruction to
 28 the extent that it seeks information or documents protected by the attorney-client

1 privilege, work product doctrine, or any other applicable law, privilege, immunity,
2 protection, or doctrine. WDP claims such privileges and protections to the extent
3 implicated by each Interrogatory, and excludes privileged and protected
4 information from its responses. The production of any privileged information or
5 document by WDP is unintentional, and any such inadvertent production shall not
6 be construed as a waiver of any applicable objection or privilege.

7 5. WDP objects to each and every Interrogatory, definition, and instruction to
8 the extent that it calls for a legal conclusion. Any response by WDP shall not be
9 construed as providing a legal conclusion regarding the meaning or application of
10 any terms or phrases used in Plaintiffs' Interrogatories, definitions, or instructions.

11 6. WDP objects to each and every Interrogatory, definition, and instruction to
12 the extent that it seeks information or documents already in the possession of or
13 more readily available to Plaintiffs, that are equally available to Plaintiffs as they
14 are to WDP, or that could be derived or ascertained by Plaintiffs with substantially
15 the same effort that would be required of WDP.

16 7. WDP objects to each and every Interrogatory, definition, and instruction to
17 the extent that it seeks information or documents not within WDP's possession,
18 custody, or control.

19 8. WDP objects to each and every Interrogatory, definition, and instruction to
20 the extent that it is unreasonably cumulative or duplicative.

21 9. WDP objects to each and every Interrogatory, definition, and instruction to
22 the extent that it seeks any confidential, proprietary, competitively sensitive, trade
23 secret information, financial information, or any other information or documents
24 that WDP is not permitted to disclose pursuant to confidentiality or other legal
25 obligations to third parties.

26 10. WDP objects to each and every Interrogatory, definition, and instruction
27 to the extent that it contains subparts or a compound, conjunctive, or disjunctive
28 request.

1 11. WDP objects to each and every Interrogatory, definition, and instruction
2 to the extent that it calls for WDP to form and then render an expert opinion.

3 12. WDP objects to each and every Interrogatory, definition, and instruction
4 to the extent that it is argumentative.

5 13. WDP objects to each and every Interrogatory, definition, and instruction
6 to the extent that it is speculative, lacks foundation, or contains characterizations,
7 definitions, or assumptions. Nothing contained in or absent from WDP's responses,
8 objections, or production shall constitute, or be deemed as, an admission,
9 concession, or agreement that Plaintiffs' characterizations, definitions, or
10 assumptions are correct or accurate.

11 14. WDP objects to each and every Interrogatory, definition, and instruction
12 to the extent that it purports to require WDP to compile information in a manner
13 that is not maintained in the ordinary course of business, or to create documents,
14 including but not limited to charts, tables, reviews, proposals, methodologies,
15 and/or breakdowns, that do not already exist.

16 15. WDP objects to each and every Interrogatory as overly broad, unduly
17 burdensome, and not proportional to the needs of this case to the extent that it calls
18 for the production of "all" documents and/or communications concerning a subject
19 matter, without regard to whether the documents are likely to be privileged,
20 duplicative, and/or have any (or minimal) connection to the claims or defenses at
21 issue in this case.

22 16. WDP objects to each and every Interrogatory to the extent it seeks
23 discovery of documents or electronically stored information from sources that are
24 not reasonably accessible in light of the burdens or costs required to locate, restore,
25 review and produce whatever responsive information may be found. To the extent
26 that any Interrogatory requires the identification or production of email currently in
27 electronic form, or any other electronic communications or electronically stored
28 information, and WDP agrees to conduct a search of media reasonably likely to

1 contain the same, WDP will search readily accessible email or other electronic
 2 media in relation to individual custodians or other sources likely to have responsive
 3 documents. WDP will not search emails that are inaccessible or that are overly
 4 burdensome to restore and/or search (e.g., disaster recovery tapes), or other media
 5 containing electronically stored information that are inaccessible or unduly
 6 burdensome to search.

7
 8 *Objections to Definitions and Instructions (Interrogatories):*

9 1. WDP's responses, regardless of whether they include a specific objection,
 10 do not constitute an adoption or acceptance of the definitions and instructions that
 11 Plaintiffs seeks to impose.

12 2. For clarity, WDP shall refer to "Pirates of the Caribbean film" Pirates of
 13 the Caribbean: The Curse of the Black Pearl (2003), as Film or The Curse;
 14 Plaintiffs' "Pirates of the Caribbean screenplay" as Screenplay; and the "Pirates of
 15 the Caribbean ride" as the Ride.

16 3. According to Plaintiffs' definition, the term "Pirates of the Caribbean
 17 franchise" would encompass any "work, product, film, book, or similar" and any
 18 "sales, licensing, or royalties related thereto" created by anyone after 2003, whether
 19 or not related in any way to the Film or WDP. WDP objects to the defined term
 20 "Pirates of the Caribbean franchise" and to each and every Interrogatory containing
 21 that term, on the ground that it is vague and ambiguous to the extent it purports to
 22 include any work, product, film, book, sales, licensing, royalties, or other elements
 23 besides The Curse and the four films: Pirates of the Caribbean: Dead Man's Chest,
 24 Pirates of the Caribbean: At World's End, Pirates of the Caribbean: On Stranger
 25 Tides, and Pirates of the Caribbean: Dead Men Tell No Tales (together, herein, the
 26 "Four Film Sequels"). Thus, to the extent WDP's responses and objections use the
 27 term "Pirates of the Caribbean franchise," that term shall only refer to Pirates of the
 28 Caribbean: The Curse of the Black Pearl; Pirates of the Caribbean: Dead Man's

1 Chest, Pirates of the Caribbean: At World's End, Pirates of the Caribbean: On
2 Stranger Tides, and Pirates of the Caribbean: Dead Men Tell No Tales.

3 4. WDP objects to the defined terms "document" and "documents" and to
4 each and every Interrogatory containing those terms, to the extent the definition
5 seeks to impose an obligation beyond Federal Rule of Civil Procedure 34(a). WDP
6 will construe these terms in accordance with the Federal Rules of Civil Procedure,
7 the Local Rules, and Orders of this Court.

8 5. WDP objects to the defined terms "communication" and
9 "communications" and to each and every Interrogatory containing those terms, on
10 the ground that they are vague, ambiguous, overly broad, unduly burdensome, and
11 not proportional to the needs of this case to the extent that these terms purport to
12 impose an obligation beyond Federal Rule of Civil Procedure 34(a) and to the
13 extent these terms are duplicative and cumulative of the defined terms "document"
14 and "documents." WDP will construe these terms in accordance with the Federal
15 Rules of Civil Procedure, the Local Rules, and Orders of this Court.

16 6. WDP objects to the defined term "relating to" and to each and every
17 Interrogatory containing that term, on the ground that it is vague, ambiguous,
18 overly broad, and unduly burdensome, and to the extent it requires WDP to
19 speculate as to whether documents "relate" the topic specified. WDP will construe
20 this term in accordance with its plain English meaning.

21 7. WDP objects to the defined terms "person" and "persons" and to each and
22 every Interrogatory containing those terms, on the ground that they are vague,
23 ambiguous, overly broad, unduly burdensome, and not proportional to the needs of
24 this case. WDP will construe these terms in accordance with their plain English
25 meaning.

26 8. WDP objects to Instruction 14 to the extent it is overly burdensome and
27 imposes obligations beyond those imposed by the Federal Rules of Civil Procedure.
28 WDP will not provide a privilege log in response to these interrogatories to the

1 extent that privileged documents involve litigation related to the Film. WDP is
 2 willing to meet and confer regarding a proportional privilege log.

3 9. WDP objects to Instruction 15 to the extent it is overly burdensome and
 4 imposes obligations beyond those required by Rule 26(e). WDP will supplement
 5 responses as indicated herein, but will not undertake to supplement such responses
 6 after the close of discovery.

7 **INTERROGATORY NO. 12:**

8 State Disney's gross revenue on an annual basis for the Pirates of the
 9 Caribbean franchise.

10 **RESPONSE TO INTERROGATORY NO. 12:**

11 WDP incorporates its Prefatory Statement, General Objections, and
 12 Objections to Plaintiffs' Definitions and Instructions. WDP further objects to this
 13 Interrogatory as seeking highly-sensitive confidential business information for
 14 tactical advantage, rather than [sic] evidentiary value. WDP objects to the term
 15 "Pirates of the Caribbean franchise" on the ground that the term is vague and
 16 ambiguous to the extent it purports to include any work, product, film, book, sales,
 17 licensing, or royalties besides *The Curse* and Four Film Sequels. As defined, the
 18 term would encompass any "work, product, film, book, or similar" and any "sales,
 19 licensing, or royalties related thereto" created by anyone after 2003, whether or not
 20 related in any way to *The Curse* or WDP. WDP further objects to this Interrogatory
 21 as overly broad, unduly burdensome, not proportional to the needs of the case, and
 22 not relevant to any party's claims or defenses to the extent it seeks information
 23 regarding gross revenue derived from any works besides *The Curse*. Plaintiffs have
 24 not provided any facts to support any basis for claiming infringement for the Four
 25 Film Sequels or damages contentions to show the relevance of this Interrogatory. In
 26 response to WDP counsel's January 25, 2022 email request for information
 27 regarding the relevance of this and similar requests, Plaintiffs' counsel stated
 28 vaguely that these requests "relate to damages for Disney's infringement" and

1 “relate[] to Disney’s indirect profits.” WDP further objects to this Interrogatory as
 2 overly broad, unduly burdensome, not proportional to the needs of the case, and not
 3 relevant to any party’s claims or defenses to the extent it seeks information
 4 regarding gross revenue pre-dating November 14, 2014. WDP further objects to this
 5 Interrogatory insofar as “gross revenue . . . for the Pirates of the Caribbean
 6 franchise” is vague and ambiguous as to the revenue streams sought. WDP further
 7 objects that this Interrogatory calls for a legal conclusion, is premature, and the
 8 subject of expert testimony.

9 Subject to and without waiving the foregoing objections, WDP responds as
 10 follows: WDP refers Plaintiffs to its response to Interrogatory No. 11 regarding
 11 gross revenues for *The Curse*. With respect to gross revenue information for any of
 12 the Four Film Sequels or any other works sought by this request, WDP will not
 13 respond on the basis of its objections. WDP is willing to meet and confer with
 14 Plaintiffs regarding this Interrogatory.

15 **INTERROGATORY NO. 14:**

16 State Disney’s costs and expenses on an annual basis for the Pirates of the
 17 Caribbean franchise.

18 **RESPONSE TO INTERROGATORY NO. 14:**

19 WDP incorporates its Prefatory Statement, General Objections, and
 20 Objections to Plaintiffs’ Definitions and Instructions. WDP further objects to this
 21 Interrogatory as seeking highly-sensitive confidential business information for
 22 tactical advantage, rather than evidentiary value. WDP objects to the term “Pirates
 23 of the Caribbean franchise” on the ground that the term is vague and ambiguous to
 24 the extent it purports to include any work, product, film, book, sales, licensing, or
 25 royalties besides *The Curse* and Four Film Sequels. As defined, the term would
 26 encompass any “work, product, film, book, or similar” and any “sales, licensing, or
 27 royalties related thereto” created by anyone after 2003, whether or not related in
 28 any way to *The Curse* or WDP. WDP further objects to this Interrogatory as overly

1 broad, unduly burdensome, not proportional to the needs of this case, and not
 2 relevant to any party's claims or defenses to the extent it seeks information
 3 regarding costs and expenses related to any works besides The Curse. Plaintiffs
 4 have not provided any facts to support any basis for claiming infringement for the
 5 Four Film Sequels or damages contentions sufficient to show the relevance of this
 6 Interrogatory. In response to WDP counsel's January 25, 2022 email request for
 7 information regarding the relevance of this and similar requests, Plaintiffs' counsel
 8 stated vaguely that these requests "relate to damages for Disney's infringement"
 9 and "relate[] to Disney's indirect profits." WDP further objects to this
 10 Interrogatory as overly broad, unduly burdensome, not proportional to the needs of
 11 this case, and not relevant to any party's claims or defenses to the extent it seeks
 12 information regarding costs and expenses pre-dating November 14, 2014. WDP
 13 further objects to this Interrogatory insofar as "costs and expenses . . . for the
 14 Pirates of the Caribbean franchise" is vague and ambiguous as to the categories of
 15 costs and expenses sought. WDP further objects that this Interrogatory calls for a
 16 legal conclusion, is premature, and the subject of expert testimony.
 17 Subject to and without waiving the foregoing objections, WDP responds as follows:
 18 WDP refers Plaintiffs to its response to Interrogatory No. 13 regarding costs and
 19 expenses for The Curse. With respect to costs and expenses information for any of
 20 the Four Film Sequels or any other works sought by this Interrogatory, WDP will
 21 not respond on the basis of its objections. WDP is willing to meet and confer with
 22 Plaintiffs regarding this Interrogatory.

23
 24 *Prefatory Statement (RFPs):*

25 1. By responding to Plaintiffs' First Set of Requests for Production of
 26 Documents, WDP does not waive any privilege or objection that may be applicable
 27 to: (a) the use, for any purpose, by Plaintiffs of any information or documents
 28 sought by Plaintiffs or provided in response to a Request; (b) the admissibility,

1 relevance, or materiality of any of the information or documents to any issue in this
 2 case; or (c) any demand for further responses involving or relating to the subject
 3 matter of any of the Requests.

4 2. WDP's responses are based on information reasonably available to WDP
 5 as of the date of these responses. WDP's investigation is continuing and ongoing.
 6 Subject to and without waiving any of its objections set forth herein, WDP reserves
 7 the right to alter or to supplement these responses as additional information
 8 becomes known to it, but undertakes no obligation to do so beyond the obligations
 9 imposed by the Federal Rules of Civil Procedure, the Local Rules, and Orders of
 10 this Court.

11
 12 *General Objections (RFPs):*

13 The following General Objections apply to and are incorporated into each and
 14 every response to each and every specific Request, whether or not such General
 15 Objections are expressly incorporated by reference in such response.

16 1. WDP objects to each and every Request, definition, and instruction to the
 17 extent that it attempts to impose obligations inconsistent with or in addition to those
 18 required by the Federal Rules of Civil Procedure, the Local Rules or Orders of this
 19 Court, or any other applicable authority.

20 2. WDP objects to each and every Request, definition, and instruction as
 21 overly broad, unduly burdensome, and not proportional to the needs of this case to
 22 the extent that it is not reasonably limited in scope, or seeks information neither
 23 relevant to any issue in this case nor reasonably calculated to lead to the discovery
 24 of admissible evidence, particularly to the extent that compliance would force WDP
 25 to incur a substantial expense that outweighs any likely benefit of the discovery.

26 3. WDP objects to each and every Request, definition, and instruction to the
 27 extent that it lacks any reasonable time limitation, including but not limited to,
 28 because it poses an undue burden on WDP. To the extent WDP agrees to produce

1 documents in response to a specific Request, it will do so on a timeframe that is
 2 reasonable, taking into account the nature and scope of the individual Request and
 3 what is proportional to the needs of this case. Unless otherwise specified—as WDP
 4 has, for example, with respect to Requests seeking financial information—WDP
 5 limits its production to the timeframe of October 1, 1999 to June 28, 2003 (the
 6 “Relevant Timeframe”).

7 4. WDP objects to each and every Request, definition, and instruction to the
 8 extent that it seeks information or documents protected by the attorney-client
 9 privilege, work product doctrine, or any other applicable law, privilege, immunity,
 10 protection, or doctrine. WDP claims such privileges and protections to the extent
 11 implicated by each Request, and excludes privileged and protected information
 12 from its responses. The production of any privileged information or document by
 13 WDP is unintentional, and any such inadvertent production shall not be construed
 14 as a waiver of any applicable objection or privilege. Plaintiffs shall, upon the
 15 request of WDP, immediately return or destroy any such documents inadvertently
 16 produced. Further, upon Plaintiffs’ discovery of what it thinks may be a privileged
 17 document in WDP’s production, Plaintiffs should immediately inform WDP of that
 18 fact in writing. WDP will neither produce nor log privileged communications made
 19 between WDP and outside counsel, or any documents protected by the work
 20 product doctrine, after the commencement of this litigation or made in connection
 21 with similar litigation. All such communications or documents were intended to be
 22 confidential and privileged, and they have been treated as such. In light of the
 23 voluminous nature of such communications, including them in WDP’s privilege log
 24 would be unduly burdensome, not reasonably calculated to lead to the discovery of
 25 admissible evidence, and not proportional to the needs of this case.

26 5. WDP objects to each and every Request, definition, and instruction to the
 27 extent that it calls for a legal conclusion. Any response by WDP shall not be
 28 construed as providing a legal conclusion regarding the meaning or application of

1 any terms or phrases used in Plaintiffs' Requests, definitions, or instructions.

2 6. WDP objects to each and every Request, definition, and instruction to the
3 extent that it seeks information or documents already in the possession of or more
4 readily available to Plaintiffs, that are equally available to Plaintiffs as they are to
5 WDP, or that could be derived or ascertained by Plaintiffs with substantially the
6 same effort that would be required of WDP.

7 7. WDP objects to each and every Request, definition, and instruction to the
8 extent that it seeks information or documents not within WDP's possession,
9 custody, or control.

10 8. WDP objects to each and every Request, definition, and instruction to the
11 extent that it is unreasonably cumulative or duplicative.

12 9. WDP objects to each and every Request, definition, and instruction to the
13 extent that it seeks any confidential, proprietary, competitively sensitive, trade
14 secret information, financial information, or any other information or documents
15 that WDP is not permitted to disclose pursuant to confidentiality or other legal
16 obligations to third parties.

17 10. WDP objects to each and every Request, definition, and instruction to the
18 extent that it contains subparts or a compound, conjunctive, or disjunctive request.

19 11. WDP objects to each and every Request, definition, and instruction to the
20 extent that it calls for WDP to form and then render an expert opinion.

21 12. WDP objects to each and every Request, definition, and instruction to the
22 extent that it is argumentative.

23 13. WDP objects to each and every Request, definition, and instruction to the
24 extent that it is speculative, lacks foundation, or contains characterizations,
25 definitions, or assumptions. Nothing contained in or absent from WDP's responses,
26 objections, or production shall constitute, or be deemed as, an admission,
27 concession, or agreement that Plaintiffs' characterizations, definitions, or
28 assumptions are correct or accurate.

1 14. WDP objects to each and every Request, definition, and instruction to the
 2 extent that it purports to require WDP to compile information in a manner that is
 3 not maintained in the ordinary course of business, or to create documents, including
 4 but not limited to charts, tables, reviews, proposals, methodologies, and/or
 5 breakdowns, that do not already exist.

6 15. WDP objects to each and every Request as overly broad, unduly
 7 burdensome, and not proportional to the needs of this case to the extent that it calls
 8 for the production of “all” documents and/or communications concerning a subject
 9 matter, without regard to whether the documents are likely to be privileged,
 10 duplicative, and/or have any (or minimal) connection to the claims or defenses at
 11 issue in this case.

12 16. WDP objects to each and every Request to the extent it seeks discovery
 13 of documents or electronically stored information from sources that are not
 14 reasonably accessible in light of the burdens or costs required to locate, restore,
 15 review and produce whatever responsive information may be found. To the extent
 16 that any Request requires the identification or production of email currently in
 17 electronic form, or any other electronic communications or electronically stored
 18 information, and WDP agrees to conduct a search of media reasonably likely to
 19 contain the same, WDP will search readily accessible email or other electronic
 20 media in relation to individual custodians or other sources likely to have responsive
 21 documents. WDP will not search emails that are inaccessible or that are overly
 22 burdensome to restore and/or search (e.g., disaster recovery tapes), or other media
 23 containing electronically stored information that are inaccessible or unduly
 24 burdensome to search.

25
 26 *Objections to Definitions and Instructions (RFPs):*

27 1. WDP’s responses, regardless of whether they include a specific objection,
 28 do not constitute an adoption or acceptance of the definitions and instructions that

1 Plaintiffs seeks to impose.

2 2. For clarity, WDP shall refer to “Pirates of the Caribbean film” Pirates of
3 the Caribbean: The Curse of the Black Pearl (2003) as Film or The Curse;
4 Plaintiffs’ “Pirates of the Caribbean screenplay” as Screenplay; and “Pirates of the
5 Caribbean ride” as the Ride.

6 3. According to Plaintiffs’ definition, the term “Pirates of the Caribbean
7 franchise” would encompass any “work, product, film, book, or similar” and any
8 “sales, licensing, or royalties related thereto” created by anyone after 2003, whether
9 or not related in any way to the Film or WDP. WDP objects to the defined term
10 “Pirates of the Caribbean franchise” and to each and every Request containing that
11 term, on the ground that it is vague and ambiguous to the extent it purports to
12 include any work, product, film, book, sales, licensing, royalties, or other elements
13 besides The Curse and the four films: Pirates of the Caribbean: Dead Man’s Chest,
14 Pirates of the Caribbean: At World’s End, Pirates of the Caribbean: On Stranger
15 Tides, and Pirates of the Caribbean: Dead Men Tell No Tales (together, herein, the
16 “Four Film Sequels”). Thus, to the extent WDP’s responses and objections use the
17 term “Pirates of the Caribbean franchise,” it shall only refer to Pirates of the
18 Caribbean: The Curse of the Black Pearl; Pirates of the Caribbean: Dead Man’s
19 Chest, Pirates of the Caribbean: At World’s End, Pirates of the Caribbean: On
20 Stranger Tides, and Pirates of the Caribbean: Dead Men Tell No Tales.

21 4. WDP objects to the defined terms “document” and “documents” and to
22 each and every Request containing those terms, to the extent the definition seeks to
23 impose an obligation beyond Federal Rule of Civil Procedure 34(a). WDP will
24 construe these terms in accordance with the Federal Rules of Civil Procedure, the
25 Local Rules, and Orders of this Court.

26 5. WDP objects to the defined terms “communication” and
27 “communications” and to each and every Request containing those terms, on the
28 ground that they are vague, ambiguous, overly broad, unduly burdensome, and not

1 proportional to the needs of this case to the extent that these terms purport to
 2 impose an obligation beyond Federal Rule of Civil Procedure 34(a) and to the
 3 extent these terms are duplicative and cumulative of the defined terms “document”
 4 and “documents.” WDP will construe these terms in accordance with the Federal
 5 Rules of Civil Procedure, the Local Rules, and Orders of this Court.

6 6. WDP objects to the defined term “relating to” and to each and every
 7 Request containing that term, on the ground that it is vague, ambiguous, overly
 8 broad, and unduly burdensome, and to the extent it requires WDP to speculate as to
 9 whether documents “relate” the topic specified. WDP will construe this term in
 10 accordance with its plain English meaning.

11 7. WDP objects to the defined terms “person” and “persons” and to each and
 12 every Request containing those terms, on the ground that they are vague,
 13 ambiguous, overly broad, unduly burdensome, and not proportional to the needs of
 14 this case. WDP will construe these terms in accordance with their plain English
 15 meaning.

16 8. WDP objects to Instruction 16 to the extent it is overly burdensome and
 17 imposes obligations beyond those imposed by the Federal Rules of Civil Procedure.
 18 WDP will not provide a privilege log in response to these Requests to the extent
 19 that privileged documents involve litigation related to the Film. WDP is willing to
 20 meet and confer regarding a proportional privilege log.

21 9. WDP objects to Instruction 17 to the extent it is overly burdensome and
 22 imposes obligations beyond those required by Rule 26(e). WDP will supplement
 23 responses as indicated herein, but will not undertake to supplement such responses
 24 after the close of discovery.

25 **REQUEST FOR PRODUCTION NO. 26:**

26 Documents sufficient to show a detailed summary of costs and expenses on
 27 an annual basis relating to the Pirates of the Caribbean franchise following the
 28 release of the Pirates of the Caribbean film, including without limitation, film

1 sequels and merchandise.

2 **RESPONSE TO REQUEST FOR PRODUCTION NO. 26:**

3 WDP incorporates its Prefatory Statement, General Objections, and
 4 Objections to Plaintiffs' Definitions and Instructions. WDP further objects to this
 5 Request as seeking highly-sensitive confidential business information for tactical
 6 advantage, rather than evidentiary value. WDP further objects to the term "Pirates
 7 of the Caribbean franchise" on the ground that the term is vague and ambiguous to
 8 the extent it purports to include any work, product, film, book, sales, licensing, or
 9 royalties besides The Curse and the Four Film Sequels. As defined, the term would
 10 encompass any "work, product, film, book, or similar" and any "sales, licensing, or
 11 royalties related thereto" created by anyone after 2003, whether or not related in
 12 any way to The Curse or WDP. WDP further objects to this Request as overly
 13 broad, unduly burdensome, not proportional to the needs of this case, and not
 14 relevant to any party's claims or defenses to the extent it seeks information
 15 regarding costs and expenses relating to any works or products besides The Curse.
 16 Plaintiffs have not provided any facts to support any basis for claiming
 17 infringement for the Four Film Sequels or damages contentions sufficient to show
 18 the relevance of this Request. In response to WDP counsel's January 25, 2022
 19 email request for information regarding the relevance of this and similar requests,
 20 Plaintiffs' counsel stated vaguely that these requests "relate to damages for
 21 Disney's infringement" and "relate[] to Disney's indirect profits." WDP further
 22 objects to this Request as overly broad, unduly burdensome, not proportional to the
 23 needs of this case, not relevant to any party's claims or defenses, and vague and
 24 ambiguous insofar as it seeks information regarding the costs and expenses
 25 "relating to . . . merchandise." For the reasons stated above, Plaintiffs have not
 26 provided information regarding their damages contentions sufficient to show the
 27 relevance of this Request. WDP further objects to this Request as overly broad,
 28 unduly burdensome, not proportional to the needs of this case, and not relevant to

1 any party's claims or defenses to the extent it seeks information regarding costs and
2 expenses pre-dating November 14, 2014. WDP further objects that the Request for
3 a "detailed summary" is vague and ambiguous, because it is subject to multiple
4 interpretations. WDP further objects to this Request on the ground that the term
5 "relating to the Pirates of the Caribbean franchise" is vague and ambiguous as to
6 the categories of costs and expenses sought.

7 On the basis of its objections, WDP will not produce documents in response
8 to this Request.

9 **REQUEST FOR PRODUCTION NO. 27:**

10 Documents sufficient to show a detailed summary of gross revenue on an
11 annual basis relating to the Pirates of the Caribbean franchise following the release
12 of the Pirates of the Caribbean film, including without limitation, film sequels and
13 merchandise.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 27:**

15 WDP incorporates its Prefatory Statement, General Objections, and
16 Objections to Plaintiffs' Definitions and Instructions. WDP further objects to this
17 Request as seeking highly-sensitive confidential business information for tactical
18 advantage, rather than evidentiary value. WDP further objects to the term "Pirates
19 of the Caribbean franchise" on the ground that the term is vague and ambiguous to
20 the extent it purports to include any work, product, film, book, sales, licensing, or
21 royalties besides The Curse and Four Film Sequels. As defined, the term would
22 encompass any "work, product, film, book, or similar" and any "sales, licensing, or
23 royalties related thereto" created by anyone after 2003, whether or not related in
24 any way to The Curse or WDP. WDP further objects to this Request as overly
25 broad, unduly burdensome, not proportional to the needs of this case, and not
26 relevant to any party's claims or defenses to the extent it seeks information
27 regarding gross revenues derived from any works or products besides The Curse.
28 Plaintiffs have not provided any facts to support any basis for claiming

1 infringement for the Four Film Sequels or damages contentions sufficient to show
 2 the relevance of this Request. In response to WDP counsel's January 25, 2022
 3 email request for information regarding the relevance of this and similar requests,
 4 Plaintiffs' counsel stated vaguely that these requests "relate to damages for
 5 Disney's infringement" and "relate[] to Disney's indirect profits." WDP further
 6 objects to this Request as overly broad, unduly burdensome, not proportional to the
 7 needs of this case, not relevant to any party's claims or defenses, and vague and
 8 ambiguous insofar as it seeks information regarding gross revenues "relating to . . .
 9 merchandise." For the reasons stated above, Plaintiffs have not provided
 10 information regarding their damages contentions sufficient to show the relevance of
 11 this Request. WDP further objects to this Request as overly broad, unduly
 12 burdensome, not proportional to the needs of this case, and not relevant to any
 13 party's claims or defenses to the extent it seeks information regarding gross revenue
 14 pre-dating November 14, 2014. WDP further objects that the Request for a
 15 "detailed summary" is vague and ambiguous, because it is subject to multiple
 16 interpretations. WDP further objects to this Request on the ground that the term
 17 "relating to the Pirates of the Caribbean franchise" is vague and ambiguous as to
 18 the categories of revenues sought.

19 On the basis of its objections, WDP will not produce documents in response
 20 to this request.

21 **REQUEST FOR PRODUCTION NO. 28:**

22 Documents sufficient to show Disney's internal accounting methods for the
 23 Pirates of the Caribbean film and Pirates of the Caribbean franchise.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 28:**

25 WDP incorporates its Prefatory Statement, General Objections, and
 26 Objections to Plaintiffs' Definitions and Instructions. WDP further objects to this
 27 Request as seeking highly-sensitive confidential business information. WDP
 28 further objects that the phrase "internal accounting methods" is vague and

1 ambiguous, because the phrase is subject to multiple interpretations. WDP does not
 2 know what is meant by the phrase. WDP further objects to the term “Pirates of the
 3 Caribbean franchise” on the ground that it is vague and ambiguous to the extent it
 4 purports to include any work, product, film, book, sales, licensing, or royalties
 5 besides The Curse and Four Film Sequels. As defined, the term would encompass
 6 any “work, product, film, book, or similar” and any “sales, licensing, or royalties
 7 related thereto” created by anyone after 2003, whether or not related in any way to
 8 The Curse or WDP. WDP further objects to this Request as overly broad, unduly
 9 burdensome, not proportional to the needs of this case, and not relevant to any
 10 party’s claims or defenses to the extent it seeks information regarding “internal
 11 accounting methods” for any works or products besides The Curse. Plaintiffs have
 12 not provided any facts to support any basis for claiming infringement for the Four
 13 Film Sequels or damages contentions sufficient to show the relevance of this
 14 Request. In response to WDP counsel’s January 25, 2022 email request for
 15 information regarding the relevance of this and similar requests, Plaintiffs’ counsel
 16 stated vaguely that these requests “relate to damages for Disney’s infringement”
 17 and “relate[] to Disney’s indirect profits.” WDP further objects to this Request as
 18 overly broad, unduly burdensome, not proportional to the needs of this case, and
 19 not relevant to any party’s claims or defenses to the extent it seeks information
 20 regarding “internal accounting methods” pre-dating November 14, 2014.

21 Subject to and without waiving the foregoing objections, WDP responds as
 22 follows: WDP agrees to meet and confer with Plaintiffs regarding the request for
 23 documents sufficient to show WDP’s internal accounting methods for The Curse.
 24 On the basis of its objections, WDP will not produce documents in response to the
 25 request for documents sufficient to show its internal accounting methods for the
 26 “Pirates of the Caribbean franchise.”

27 **REQUEST FOR PRODUCTION NO. 29:**

28 Documents relating to any internal assessment, valuation, or analysis

1 apportioning the value or profits of the Pirates of the Caribbean film or Pirates of
2 the Caribbean franchise.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 29:**

4 WDP incorporates its Prefatory Statement, General Objections, and
5 Objections to Plaintiffs' Definitions and Instructions. WDP further objects to this
6 Request as seeking highly-sensitive confidential business information for tactical
7 advantage, rather than evidentiary value. WDP further objects that the phrase
8 "apportioning the value or profits" is vague and ambiguous. To the extent this
9 Request asks WDP to produce documents sufficient to show its methodology for
10 apportioning any profits to allegedly infringing or non-infringing aspects of The
11 Curse or other works, then WDP objects that this Request calls for a legal
12 conclusion, is premature, and the subject of expert testimony. Polar Bear Prods,
13 Inc. v. Timex Corp., 384 F.3d 700, 711 (9th Cir. 2004). WDP further objects to the
14 term "Pirates of the Caribbean franchise" on the ground that it is vague and
15 ambiguous to the extent it purports to include any work, product, film, book, sales,
16 licensing, or royalties besides The Curse and Four Film Sequels. As defined, the
17 term would encompass any "work, product, film, book, or similar" and any "sales,
18 licensing, or royalties related thereto" created by anyone after 2003, whether or not
19 related in any way to The Curse or WDP. WDP further objects to this Request as
20 overly broad, unduly burdensome, not proportional to the needs of this case, and
21 not relevant to any party's claims or defenses to the extent it seeks information
22 regarding "apportioning the value or profits" of any works or products besides The
23 Curse. Plaintiffs have not provided any facts to support any basis for claiming
24 infringement for the Four Film Sequels or damages contentions sufficient to show
25 the relevance of this Request. In response to WDP counsel's January 25, 2022
26 email request for information regarding the relevance of this and similar requests,
27 Plaintiffs' counsel stated vaguely that these requests "relate to damages for
28 Disney's infringement" and "relate[] to Disney's indirect profits." WDP further

1 objects to this Request as overly broad, unduly burdensome, not proportional to the
 2 needs of this case, and not relevant to any party's claims or defenses to the extent it
 3 seeks information regarding "apportioning the value or profits" pre-dating
 4 November 14, 2014.

5 On the basis of its objections, WDP will not produce documents in response
 6 to this Request.

7 **B. Requested Relief**

8 Plaintiffs request an Order overruling Disney's objections to Interrogatories
 9 12 & 14 and Requests for Production 26-29 and compelling Disney to produce
 10 documents and financial information about the Pirates of the Caribbean film
 11 sequels.

12 **C. Screenwriters' Contentions and Points and Authorities**

13 The Screenwriters seek to compel Disney to produce financial information
 14 about the Pirates of the Caribbean sequel films. As background, the Screenwriters
 15 sued Disney for copyright infringement over the first Pirates of the Caribbean film
 16 (the Curse of the Black Pearl). Disney has since released four sequels to form the
 17 Pirates of the Caribbean franchise. The Screenwriters contend financial information
 18 for these sequel films is discoverable information because it is relevant to damages
 19 based on two legal theories below. Disney contends that this information is
 20 irrelevant and that the information contains "highly confidential and sensitive
 21 information."

22 **1. Financial information for the sequel films is relevant to a** 23 **hypothetical license damages theory.**

24 The Copyright Act allows the Screenwriters to pursue both actual damages
 25 and Disney's profits. 17 U.S.C. §§ 504(a)-(b). One form of actual damages is a
 26 hypothetical license. *Oracle Corp. v. SAP AG*, 765 F.3d 1081, 1087 (9th Cir. 2014).
 27 A hypothetical license is the "amount a willing buyer would have been reasonably
 28 required to pay a willing seller at the time of the infringement for the actual use."

1 *Wall Data Inc. v. L.A. Cty. Sheriff's Dept.*, 447 F.3d 769, 786 (9th Cir. 2006). The
 2 Screenwriters intend to offer expert testimony about that hypothetical license. One
 3 element of that hypothetical license will include the fact that industry standards
 4 included screenwriter compensation for sequel films. *See, e.g.*, Laiter Decl. Ex. 4-B.

5 Indeed, the Screenwriters and Disney included such a provision in a contract
 6 that pre-dated Disney's infringement on the Pirates film. The Screenwriters and
 7 Disney executed a contract over a project which Plaintiffs wrote and optioned to
 8 Disney called Red Hood in 2000. Section E of the Red Hood Contract requires
 9 Disney to pay the Screenwriters a royalty for any sequel films:

10 If WDPc produces and releases the Picture as a feature-
 11 length theatrical motion picture which is based in whole or
 12 in part upon the Screenplay, and thereafter produces a
 13 theatrical sequel to or a theatrical remake of the Picture . .
 14 . then Artist shall be entitled to the applicable royalty
 15 specified below.

16 1. **Theatrical Sequel.** One-half (1/2) of the Purchase Price
 17 actually paid to Artist pursuant to Paragraph B.2. above
 18 plus, as contingent compensation, **a percentage of**
 19 **Defined Contingent Proceeds (if any) of such sequel,**
 20 which percentage shall be equal to one-half (1/2) of the
 21 percentage of Defined Contingent Proceeds to which
 22 Artist was entitled under Paragraph C.2. above (e.g., 2 ½
 23 % of the Defined Contingent Proceeds for the sequel if
 24 Artist received sole "screenplay by" or sole "written by"
 25 credit for the picture).

26 Laiter Decl. Ex. 4-B (emphasis added)

27 Put differently, for any sequel film, Disney would owe the Screenwriters half the
 28 royalty due to them for the original film. Thus, financial information for the sequel
 films is relevant to the Screenwriters' claim for damages, and the Court should
 compel Disney to provide it in discovery and allow the fact-finder to resolve any
 dispute on the merits.

2. Financial information for the sequel films is relevant to the Screenwriters' claim for indirect profits.

Copyright law also allows the Screenwriters to pursue Disney's indirect
 profits from its infringement. To recover indirect profits, the Screenwriters need

1 only show a “causal nexus” between the Plaintiffs’ screenplay (as embodied in the
 2 original *Pirates of the Caribbean* film) and the source of profits (here, the sequel
 3 films). *See Polar Bear Prods., Inc. v. Timex Corp.*, 384 F.3d 700, 710, 712 (9th Cir.
 4 2004). Yet for purposes of discovery, the Screenwriters have a lower burden. In
 5 discovery, courts only require a “sufficient *possibility* of a causal nexus.” *Charter*
 6 *Sch. Capital, Inc. v. Charter Asset Mgmt. Fund, LP*, 2015 WL 12655550, at *3
 7 (C.D. Cal. Mar. 9, 2015). Then plaintiffs are “entitled to ‘explore that issue further
 8 through the discovery process.’” *Id.* (quoting *Sys. Am., Inc. v. Rockwell Software,*
 9 *Inc.*, 2007 WL 1593219, at *1 (N.D. Cal. June 1, 2007)). “[T]he question of
 10 whether or not plaintiff ‘will be able to *prove* a sufficient nexus to recover indirect
 11 profits’” is “a question for another day.” *Id.* (quoting *Sys. Am.*, 2007 WL 1593219,
 12 at *1); *see also Ultra Int’l Music Publishing v. Phan*, 2015 WL 13919167, at *2
 13 (C.D. Cal. Apr. 1, 2015) (distinguishing proof of nexus from discoverability of
 14 documents based on possibility of nexus).

15 The Screenwriters’ claim that Disney received indirect profits surpasses this
 16 low standard for discovery. A sequel, by definition, is a production that “continues
 17 the story of an earlier one.” Pakkebier Decl. Ex. 5 *Sequel*, Oxford Learner’s
 18 Dictionary. And the sequel films do so here through the continuation of main
 19 characters, supernatural elements, and the duality of morality. Courts apply a but-
 20 for standard in similar situations. *See Burns v. Imagine Films Entm’t, Inc.*, 164
 21 F.R.D. 589, 592 (W.D.N.Y. 1996) (“the attraction would not exist but for the
 22 success of the motion picture *Backdraft*,” and thus some “profits of the Backdraft
 23 Attraction may be indirectly attributable to any infringement of the Plaintiffs’
 24 screenplays, and the information requested in the Discovery Request may be
 25 relevant in calculating the damages for any infringement”). Here too, but-for the
 26 first *Pirates* film, the sequels would not exist, and they qualify as derivative works
 27 of the original screenplay. *See Garcia v. Google, Inc.*, 766 F.3d 929, 935 (9th Cir.
 28 2014) (“A screenplay is itself a copyrightable creative work and a film is

1 a derivative work of the screenplay on which it is based”), *superseded on other*
 2 *grounds*, 786 F.3d 733, 741 (9th Cir. 2015) (en banc) (“a motion picture is
 3 derivative of the script”). At minimum, the Screenwriters should have a chance to
 4 develop its record in discovery to present this theory on the merits.

5 In fact, Disney conceded that a ripe dispute over damages on the sequel
 6 information existed at the summary judgment hearing in front of Judge Marshall.
 7 Disney’s counsel acknowledged that the Screenwriters “do have allegations that the
 8 subsequent sequels are derivative works and **so there might be liability**. But it all
 9 flows from the liability as to the first movie *Curse of the Black Pearl*.” See
 10 Pakkebie Decl. Ex. 6, Transcript at 20:22-25 (emphasis added). That Disney
 11 recognized the potential for liability underscores that the financial information is at
 12 least discoverable. Any further challenges should be on the merits at trial or on
 13 *Daubert*.

14 Disney’s reliance on this Court’s decision in *Salinas v. Procter & Gamble*
 15 *Co.* is not persuasive. 2020 WL 8455187, at *2 (C.D. Cal. Dec. 4, 2020). *Salinas*
 16 concerned an indirect profits theory based on an infringing advertisement—a
 17 copyrighted whistle—and sales of consumer goods. *Id.* Such a theory is notoriously
 18 difficult—if not impossible—to meet. As one court put it, indirect profits based on
 19 advertising “will always be difficult and often impossible to calculate in a
 20 reasonable manner the revenues made from an infringing advertising campaign”
 21 because “[s]ales are a function of many variables which are interrelated in complex
 22 and often unknown ways.” *Sid & Marty Krofft Television Prods., Inc. v.*
 23 *McDonald’s Corp.*, 221 U.S.P.Q. 114, 1983 WL 1142, at *2 (C.D. Cal. 1983).
 24 Whether consumers bought products based on a whistle in an advertisement is
 25 incomparable to Disney’s creation of a movie franchise from a foundational
 26 screenplay.

27 Finally, Disney also objected to this discovery because it contains “highly
 28 sensitive information.” Pakkebie Decl. Ex. 2 at 1-2. But courts routinely overrule

1 this objection when—as here—a protective order exists to protect highly
 2 confidential information. *See, e.g., Vargas v. Cty. of L.A.*, 2020 WL 4032671, at *3
 3 (C.D. Cal. May 11, 2020) (Sagar, M.J.) (“Confidentiality, however, is not a valid
 4 objection under Rule 26(b),” particularly when the “Court [has] entered the parties’
 5 agreed Protective Order . . . thus protecting confidential, proprietary, or private
 6 information from improper public disclosure.” (citations omitted)). The Court
 7 should likewise overrule Disney’s boilerplate general objections. *Id.* (“[B]oilerplate
 8 objections do *not* suffice and there is no ground upon which to reasonably argue
 9 otherwise.” (quoting *Marti v. Baires*, 2012 WL 2029720, at *5 (E.D. Cal. June 5,
 10 2012))). The Court should reach the same conclusion here. Thus, the Court should
 11 compel Disney to produce financial information on the sequel films in response to
 12 Interrogatories 12 and 14 and Requests for Production 26-29.

13 **D. Defendant WDP’s Contentions And Points And Authorities**

14 This case concerns *Curse*, a film released in 2003. Plaintiffs waited fourteen
 15 years—until late 2017—to file this copyright lawsuit claiming that popular film
 16 infringes their Screenplay.

17 Plaintiffs’ Screenplay, which is expressly based on the Disneyland theme
 18 park ride “Pirates of the Caribbean,” tells a story about a search for treasure. The
 19 story in Plaintiffs’ Screenplay revolves around six orphan children, the “Rascal
 20 Scoundrels,” who aspire to be pirates like their guardian, Davey Jones, and so
 21 embark on a quest for hidden treasure after stealing from Jones part of a treasure
 22 map. Yee Decl. Ex. B [FAC Ex. 2, Dkt. 112-2 (screenplay)]. Along the way, they
 23 encounter Jack Nefarious, the captain of a ghost ship crewed by pirates with skull
 24 face-paint, whom Jones ultimately vanquishes in a fight over the treasure. *Id.*

25 *Curse* is also based on the Disneyland theme park ride, but tells a completely
 26 different story than the Screenplay. The protagonist in *Curse* is a pirate named Jack
 27 Sparrow (played by Johnny Depp). There is no group of “Rascal Scoundrel” want-
 28 to-be pirate children. Instead, Sparrow and a blacksmith named Will Turner

(played by Orlando Bloom), seek to rescue the kidnapped daughter of an island’s governor, Elizabeth Swann (played by Keira Knightley), from the cursed pirate crew of the *Black Pearl*, captained by Hector Barbossa. Barbossa and his crew become undead skeletons in the moonlight—something inspired directly by the Disneyland ride, which starts by telling visitors: “Ye’ve seen the cursed treasure,” and takes them past, among other things, a skeleton pirate steering a ship, and skeleton pirates pouring rum down their throats.

Plaintiffs claim their Screenplay and *Curse* share similarities, each of which is framed at an extraordinary level of generality involving common, uncopyrightable tropes that are a staple of the pirate genre. For example, Plaintiffs claim their lead pirate (Davey Jones) is “cocky,” “dashing,” and “morally ambiguous,” and so is Jack Sparrow, Yee Decl. Ex. C [FAC, Dkt. 112] ¶¶ 83–85; they claim the sequence of events is “fun and fast-paced,” *id.* ¶ 91; and they say the conflicts culminate in caverns filled with treasure, *id.* ¶¶ 97–98.

Plaintiffs submitted their Screenplay to WDP in August 2000, after WDP already had written a treatment for a movie based on the “Pirates of the Caribbean” Disneyland ride. WDP’s screenplay for *Curse* was developed by multiple writers and was ultimately completed by Terry Rossio and Ted Elliott—an accomplished screenwriting pair who, by the time they worked on *Curse*, had already written screenplays for critically acclaimed and popular movies including *Shrek* and *Aladdin*.

Plaintiffs’ discovery requests seeking financial information for the Sequels, as well as financial information for *Pirates of the Caribbean* merchandise (a claim Plaintiffs appear to have dropped), are far removed from Plaintiffs’ actual claim of infringement related to *Curse*.² Each of Plaintiffs’ arguments for taking discovery

² Plaintiffs appear to have dropped their demand for discovery regarding profits from *Pirates of the Caribbean* merchandise, which is even more attenuated than their request for financial information relating to the Sequels.

1 regarding motion pictures they do not accuse of infringing their Screenplay fails for
2 the reasons described below.

3 **1. Plaintiffs Do Not Allege The Sequels Directly Infringe Their**
4 **Screenplay**

5 Plaintiffs no longer claim that WDP's Sequels directly infringed their
6 Screenplay. This charge was included in their original Complaint, but abandoned
7 in their First Amended Complaint. *See* Yee Decl. Ex. A [Compl., Dkt. 1] ¶ 52 *with*
8 *id.* Ex. C. [FAC, Dkt. 112] ¶¶ 71–74 (alleging that each film in the *Pirates of the*
9 *Caribbean* franchise after *Curse* is infringing because it is a “direct sequel to the
10 Film and a derivative work thereof [i.e., of *Curse*],” but not alleging that the sequels
11 are derivative works of Plaintiffs' Screenplay). In response to WDP's
12 Interrogatories asking Plaintiffs to identify elements of *Curse* or the Sequels that
13 Plaintiffs contend infringe their Screenplay and facts to support their contentions of
14 copying, Plaintiffs objected:

15 Plaintiffs object to this Interrogatory as seeking information not
16 relevant to any party's claims or defenses in that it requests
17 information how “any of the SEQUEL MOVIES” infringe Plaintiffs'
18 Screenplay, which is not a claim asserted in the First Amended
19 Complaint (and as explained at the summary judgment hearing).

19 Yee Decl. Ex. F [Plaintiffs' Answers to Defendant's First Set of Interrogatories] at
20 8–9, 11. Plaintiffs have also confirmed during the parties' meet and confer, when
21 WDP has pressed for details regarding the alleged elements infringed, that Plaintiffs
22 are *not* alleging that the Sequels infringe Plaintiffs' Screenplay. Yee Decl. ¶ 8.
23 Plaintiffs have thus squarely surrendered any claim to damages related to the
24 Sequels.

25 Apart from the fact Plaintiffs are trying to resurrect a theory they
26 purposefully abandoned, their arguments utterly fail. In Plaintiffs' motion, they
27 make little attempt to describe which elements of their Screenplay are similar to
28 elements in the Sequels, alluding to generic elements of story, rather than concrete

1 expression: “the continuation of main characters, supernatural elements, and the
 2 duality of morality.” Section III.C.2, *supra*. Plaintiffs assert that the Sequels
 3 “qualify as derivative works of the original screenplay.” *Id.*, *supra*. Not so, and
 4 Plaintiffs cannot begin to support this bald assertion. *Plaintiffs* have the burden of
 5 proving that the Sequels are infringing derivative works of their Screenplay. They
 6 cannot.

7 While “a work based upon an idea or kernel contained in another work may
 8 in some sense be ‘derivative’ of the first work,” a work is a “derivative work”
 9 within the meaning of the Copyright Act only when it satisfies the Ninth Circuit
 10 “substantial similarity” standard. *See Sobhani v. @Radical.Media Inc.*, 257 F.
 11 Supp. 2d 1234, 1238 (C.D. Cal. 2003) (explaining that a “‘derivative work’ under
 12 the Copyright Act is one which ‘would be considered an infringing work if the
 13 material which it has derived from a preexisting work had been taken without the
 14 consent of the copyright proprietor of such preexisting work’”) (citing *Mirage*
 15 *Editions, Inc. v. Albuquerque A.R.T. Co.*, 856 F.2d 1341 (9th Cir. 1988)).

16 Plaintiffs do not even attempt to meet this standard by alleging *specific*
 17 elements of the Sequels that are substantially similar to their Screenplay. Notably,
 18 *both* Plaintiffs’ Screenplay and WDP’s *Pirates of the Caribbean* franchise are
 19 based on Disney’s theme park ride, making it silly to argue that aspects of the
 20 parties’ works, like the Caribbean setting, plausibly form a basis for Plaintiffs’
 21 infringement claim. That Plaintiffs cannot point to *any* specific elements from the
 22 Sequels that infringe their Screenplay means that the Sequels are not at issue in this
 23 litigation. Plaintiffs simply cannot obtain financial information regarding films for
 24 which they have no claim for damages.

25 **2. Plaintiffs’ “Hypothetical License” Damages Theory Fails—**
 26 **Plaintiffs Would Not Be Entitled To A Royalty Even**
 27 ***Assuming* Such A License Existed Here**

28 Knowing that they have not and cannot claim that the Sequels infringe

1 Plaintiffs’ Screenplay, Plaintiffs argue that the Sequel profits are relevant because
 2 they could claim damages based on a “hypothetical license” that would have given
 3 them a right to royalties for the Sequels. In support of this argument, Plaintiffs
 4 identify—for the *first time* in this motion, after years of litigation—the contract that
 5 Disney signed with them in 1999 to option a different screenplay they had written,
 6 *Red Hood*. See Yee Decl. ¶ 8. Plaintiffs argue that “Section E of the Red Hood
 7 Contract requires Disney to pay the Screenwriters a royalty for any sequel films.”
 8 Had Plaintiffs raised the *Red Hood* contract during meet and confer, WDP would
 9 have explained why the argument is doomed from the start: under that agreement,
 10 Plaintiffs only would have been entitled to receive royalties (from the original film
 11 or any sequels) if they received “Screenplay by” or “Written by” credit for the
 12 original film. See Laiter Decl. Ex. 4-B §§ C.2.a, E.1.

13 This is a critical condition. “Screenplay by” and “Written by” credits are
 14 terms of art in the screenwriting industry. See Yee Decl. Ex. D at 19–20 [WGA
 15 Screen Credits Manual]. The determination is not up to the movie studios; credit
 16 determinations are made subject to the Writers Guild of America’s (“WGA”)
 17 collective bargaining agreement with the movie studios, and the WGA resolves
 18 credits disputes via arbitration. *Id.* at 8–9. The WGA made the final
 19 credits determination for *Curse*. *Id.* Ex. E [6/6/2003 WGA Credit Determination
 20 Letter]. Four different writers did drafts of the *Curse* script, but only two—the
 21 writers of the shooting script that became the motion picture, Ted Elliott and Terry
 22 Rossio—received “Screenplay by” credits. The writers who worked on the script
 23 before them received “Story by” credits, which do not trigger any entitlement to
 24 royalties under clauses like that in the *Red Hood* option agreement. See Laiter
 25 Decl. Ex. 4-B § C.2.a (providing for royalties on any *Red Hood* sequel only if
 26 Plaintiffs receive sole or shared “screenplay credit” on the original film); *id.* § E.1
 27 (providing contingent compensation for sequels only if the screenwriter was
 28 entitled to contingent compensation for the original film).

Under the “hypothetical license” scenario Plaintiffs posit, then, Plaintiffs would not have received *any* royalty for *any* film in the *Pirates of the Caribbean* franchise, whether *Curse* or its Sequels. Plaintiffs have never alleged—nor even suggested—a hypothetical world in which they, as novice screenwriters who had never seen any of their scripts developed into a feature film, would have displaced Elliott and Rossio (seasoned industry veterans who had written *Aladdin*, *Shrek*, and other successful films) as the credited screenwriters on a major feature film like *Curse*. Nor could they, because any such claim would be purely speculative. *Wall Data Inc. v. L.A. Cnty. Sheriff’s Dep’t*, 447 F.3d 769, 786 (9th Cir. 2006) (a hypothetical lost license fee must not be based on “undue speculation”). Plaintiffs should not be permitted to conduct a fishing expedition into WDP’s profits from concededly non-infringing films based on an outlandish fantasy about a screenwriting role they never played in either *Curse* or *Red Hood*.

3. Plaintiffs Fail To Establish The Requisite “Causal Connection” Needed To Discover Indirect Profits

With no basis for asserting a direct damages claim to profits from the Sequels, Plaintiffs fall back on arguing that financial information about the Sequels is relevant to their claim for “indirect profits” from those films.

Indirect profits damages theories are notoriously fertile grounds for speculation and overreach, because such profits are by definition derived from *non-infringing* sales. As the Ninth Circuit has explained, a “copyright owner is required to do more initially than toss up an undifferentiated gross revenue number; the revenue stream must bear a legally significant relationship to the infringement.” *Polar Bear Prods, Inc. v. Timex Corp.*, 384 F.3d 700, 711 (9th Cir. 2004). “[A] plaintiff seeking to recover indirect profits must ‘formulate the initial evidence of gross revenue duly apportioned to relate to the infringement.’” *Id.* (citation omitted). The Ninth Circuit has therefore empowered courts to police such theories carefully, making clear that court may preclude “recovery of a defendant’s profits if

1 they are only remotely or speculatively attributable to the infringement.” *Frank*
 2 *Music Corp. v. Metro-Goldwyn-Mayer, Inc.*, 772 F.2d 505, 517 (9th Cir. 1985); *see*
 3 *Mackie v. Rieser*, 296 F.3d 909, 914 (9th Cir. 2002).

4 Applying this precedent, this Court has likewise held that, before seeking
 5 discovery on an indirect-profits theory, a plaintiff must articulate some non-
 6 speculative nexus between the alleged infringement and the indirect profits. In
 7 *Salinas v. Proctor & Gamble Co.*, this Court rejected a plaintiff’s motion to compel
 8 revenue information bearing on indirect profits where, like here, the plaintiff failed
 9 to proffer “any non-speculative evidence supporting his requests for indirect profits
 10 information.” 2020 WL 8455137, at *3 (C.D. Cal. Oct. 9, 2020) (Sagar, J.), *aff’d*,
 11 2020 WL 8455187, at *2 (C.D. Cal. Dec. 4, 2020). On review before the district
 12 court, the district court affirmed the order, stating that “Plaintiff must first offer
 13 reasons why he would be entitled to indirect profits beyond mere speculation. To
 14 require otherwise would permit Plaintiff to engage in a fishing expedition of
 15 Defendants’ books.” *Salinas*, 2020 WL 8455187, at *2. In so holding, this Court
 16 established a clear standard: “[a] party seeking discovery of indirect profits, that is,
 17 profits not generated by selling an infringing product, must establish a non-
 18 speculative ‘causal nexus’ between the alleged infringement and the applicable
 19 revenue stream.” *Salinas*, 2020 WL 8455137, at *3.

20 Here, as in *Salinas*, Plaintiffs seek expansive discovery into financial
 21 information for films that they have never claimed infringe their Screenplay.
 22 Despite multiple requests by WDP seeking Plaintiffs’ theory supporting their
 23 requests for indirect profits information, Plaintiffs refused in meet and confer to
 24 identify a single element of their screenplay that they contend drove interest in the
 25 Sequels or otherwise entitles them to profits for the Sequels.

26 In their motion, Plaintiffs cite the dictionary definition of “sequel” and argue
 27 in a conclusory fashion that the sequel “is a production that ‘continues the story of
 28 an earlier [production].’” This does not satisfy the indirect-profits standard,

1 because the mere fact that a film may be labeled as a “sequel” and continue the
 2 story of an earlier film does not establish that any *infringing elements* of the
 3 original story are causally connected in any way to the sequels. *See Salinas*, 2020
 4 WL 8455137, at *3. As discussed above, Plaintiffs fail concretely to identify *any*
 5 elements of the Screenplay that appear in the Sequels. Instead, they state
 6 generically that the Sequels build on *Curse* “through the continuation of main
 7 characters, supernatural elements, and the duality of morality.” But Plaintiffs do
 8 not connect any of those elements to the alleged infringement. Plaintiffs’ silence on
 9 that score speaks volumes about the weakness of their indirect-profits theory.

10 Plaintiffs attempt to distinguish *Salinas* by pointing to the fact that the
 11 plaintiff there sought indirect profits of the sales of consumer goods (Old Spice
 12 products) based on Old Spice’s use of an allegedly infringing musical composition
 13 in its advertising. But this argument ignores the central holding in *Salinas*, which
 14 applies equally to *any* theory of indirect profits discovery: plaintiffs bear the
 15 burden to “establish a non-speculative ‘causal nexus’ between the alleged
 16 infringement and the applicable revenue stream” before obtaining indirect profits
 17 discovery. *Salinas*, 2020 WL 8455137, at *3.

18 Plaintiffs’ indirect-profits claim regarding the Sequels is subject to the same
 19 criticisms that applied to the advertisement theory at issue in *Salinas*. Plaintiffs cite
 20 *Sid & Marty Krofft Television Prods., Inc. v. McDonald’s Corp.*, in arguing that
 21 product sales “are a function of many variables which are interrelated in complex
 22 and often unknown ways.” 1983 WL 1142, at *2 (C.D. Cal. Jan. 12, 1983). But
 23 the same is true of movie ticket sales, and *particularly* sequels in a franchise based
 24 on a beloved Disneyland theme park ride. Interest in the Sequels was likely driven
 25 by myriad factors, including Johnny Depp’s iconic performance in *Curse*, the
 26 popularity of the ride, the extensive marketing campaigns for the films, the
 27 name recognition of producer Jerry Bruckheimer, and many other factors. To what
 28 extent did allegedly appropriated elements from Plaintiffs’ Screenplay drive

1 consumer interest in any of the Sequels? Plaintiffs do not even begin to say.
 2 Instead, they repeatedly intone the words “sequel” and “franchise” in connection
 3 with *Curse*, which does not satisfy their burden to actually “*establish*” a causal
 4 nexus between alleged infringement and sequel profits. *Salinas*, 2020 WL
 5 8455137, at *3.

6 Finally, the sole authority cited by Plaintiffs, *Burns v. Imagine Films*
 7 *Entertainment, Inc.*, 164 F.R.D. 589 (W.D.N.Y. 1996), is an out-of-circuit district
 8 court decision from the Western District of New York. Its “but-for” reasoning—
 9 permitting discovery into profits derived from a non-infringing attraction because
 10 such attraction “would not exist but for the success of the motion picture,” *id.* at
 11 592—is directly contrary to the reasoning of *Salinas* and the Ninth Circuit case law
 12 holding that plaintiffs seeking indirect profits must do more than establish a mere
 13 “but-for” relationship between the infringement and source of indirect profit. *See*
 14 *Polar Bear*, 384 F.3d 700; *Salinas*, 2020 WL 8455187, at *2.

15 **4. There Is No Merit To Plaintiffs’ Argument That WDP** 16 **“Conceded” A Dispute Over Sequel Damages**

17 Lastly, Plaintiffs claim that during the course of a summary judgment
 18 argument, WDP “conceded that a ripe dispute over damages” exists regarding the
 19 Sequels, which justifies this discovery.

20 Defense counsel’s statement at the summary judgment hearing that Plaintiffs
 21 “have allegations [in the complaint] that the subsequent [S]equels are derivative
 22 works and so there might be liability” was a *descriptive* statement that did nothing
 23 more than acknowledge that Plaintiffs’ First Amended Complaint seeks an award of
 24 indirect profits associated with the Sequels. It certainly did not concede liability for
 25 those indirect profits, and it did not open the door to Plaintiffs’ discovery of those
 26 profits absent the causal showing required by this Court in *Salinas*.

27 **5. WDP’s Proposed Resolution**

28 During the parties’ meet and confers, Plaintiffs asked WDP to produce

1 financial information regarding the Sequels. WDP did not agree to this proposal
 2 because it contends the requests are improper for the reasons stated above. Yee
 3 Decl. ¶ 9.

4 WDP believes this Court should deny Plaintiffs' motion in its entirety. If this
 5 Court is inclined to grant the motion, then WDP would provide, on an AEO basis,
 6 the financial information for Sequels at the summary level Plaintiffs accepted for
 7 *Curse* financial information.

8 **IV. Issue 2: Pre-2014 Financial Information**

9 **A. Requests and Responses**

10 The Screenwriters served five interrogatories and seven requests for
 11 production directed toward their damages. Disney objected to these discovery
 12 requests if the information pre-dates November 2014. Disney incorporated its
 13 Prefatory Statement, General Objections, and Objections to Definitions and
 14 Instructions in each response. Pursuant to Local Rule 37-2.1, those components, as
 15 well as the text of each interrogatory or request for production, and response, are set
 16 forth below.

17 **INTERROGATORY NO. 11:**

18 State Disney's gross revenue on an annual basis for the Pirates of the
 19 Caribbean film.

20 **RESPONSE TO INTERROGATORY NO. 11:**

21 WDP incorporates its Prefatory Statement, General Objections, and
 22 Objections to Plaintiffs' Definitions and Instructions.³ WDP further objects to this
 23 Interrogatory as seeking highly-sensitive confidential business information. WDP
 24 further objects to this Interrogatory as overly broad, unduly burdensome, not
 25 proportional to the needs of this case, and not relevant to any party's claims or

26
 27 ³ For purposes of brevity, Plaintiffs have avoided repasting these components in this
 28 Section. The original text of Disney's Prefatory Statement, General Objections, and
 Objections to Plaintiffs' Definitions and Instructions are found *supra* in response to
 Issue 1.

1 defenses to the extent it seeks information regarding gross revenue pre-dating
 2 November 14, 2014. WDP further objects to this Interrogatory insofar as the phrase
 3 “gross revenue . . . for the Pirates of the Caribbean film” is vague and ambiguous as
 4 to the revenue streams sought. WDP construes this term to include The Curse
 5 revenues derived from domestic and international theatrical, physical retail,
 6 electronic home video (“EHV”), transactional video on demand (“TVOD”), pay
 7 TV, free/basic TV distribution, and other non-theatrical distribution. WDP further
 8 objects that this Interrogatory calls for a legal conclusion, is premature, and the
 9 subject of expert testimony.

10 Subject to and without waiving the foregoing objections, WDP responds as
 11 follows: WDP directs Plaintiffs to the attached CONFIDENTIAL-ATTORNEYS
 12 EYES ONLY Exhibit A, which shows WDP’s revenues for The Curse domestic
 13 and international theatrical, physical retail, electronic home video (“EHV”),
 14 transactional video on demand (“TVOD”), pay TV, and free/basic TV distribution
 15 as well as other non-theatrical distribution on an annual basis from October 2014
 16 through the end of 2021.⁴

17 WDP’s investigation is ongoing, and WDP reserves the right to supplement
 18 this response.

19
 20 **INTERROGATORY NO. 12:**

21 State Disney’s gross revenue on an annual basis for the Pirates of the
 22 Caribbean franchise.

23 **RESPONSE TO INTERROGATORY NO. 12:**

24 WDP incorporates its Prefatory Statement, General Objections, and
 25 Objections to Plaintiffs’ Definitions and Instructions. WDP further objects to

26 ⁴ By producing financial information from the fourth quarter of 2014, WDP
 27 expressly preserves and does not waive its objection that costs and expenses
 28 information pre-dating November 14, 2014 is overly broad, unduly burdensome,
 not proportional to the needs of the case, and outside the relevant damages
 limitation period.

1 this Interrogatory as seeking highly-sensitive confidential business information for
2 tactical advantage, rather than evidentiary value. WDP objects to the term “Pirates
3 of the Caribbean franchise” on the ground that the term is vague and ambiguous to
4 the extent it purports to include any work, product, film, book, sales, licensing, or
5 royalties besides The Curse and Four Film Sequels. As defined, the term would
6 encompass any “work, product, film, book, or similar” and any “sales, licensing, or
7 royalties related thereto” created by anyone after 2003, whether or not related in
8 any way to The Curse or WDP. WDP further objects to this Interrogatory as overly
9 broad, unduly burdensome, not proportional to the needs of this case, and not
10 relevant to any party’s claims or defenses to the extent it seeks information
11 regarding gross revenue derived from any works besides The Curse. Plaintiffs have
12 not provided any facts to support any basis for claiming infringement for the Four
13 Film Sequels or damages contentions sufficient to show the relevance of this
14 Interrogatory. In response to WDP counsel’s January 25, 2022 email request for
15 information regarding the relevance of this and similar requests, Plaintiffs’ counsel
16 stated vaguely that these requests “relate to damages for Disney’s infringement”
17 and “relate[] to Disney’s indirect profits.” WDP further objects to this
18 Interrogatory as overly broad, unduly burdensome, not proportional to the needs of
19 this case, and not relevant to any party’s claims or defenses to the extent it seeks
20 information regarding gross revenue pre-dating November 14, 2014. WDP further
21 objects to this Interrogatory insofar as “gross revenue . . . for the Pirates of the
22 Caribbean franchise” is vague and ambiguous as to the revenue streams sought.
23 WDP further objects that this Interrogatory calls for a legal conclusion, is
24 premature, and the subject of expert testimony.

25 Subject to and without waiving the foregoing objections, WDP responds as follows:
26 WDP refers Plaintiffs to its response to Interrogatory No. 11 regarding gross
27 revenues for The Curse. With respect to gross revenue information for any of the
28 Four Film Sequels or any other works sought by this request, WDP will not respond

1 on the basis of its objections. WDP is willing to meet and confer with Plaintiffs
2 regarding this Interrogatory.

3
4 **INTERROGATORY NO. 13:**

5 State Disney's costs and expenses on an annual basis for the Pirates of the
6 Caribbean film.

7 **RESPONSE TO INTERROGATORY NO. 13:**

8 WDP incorporates its Prefatory Statement, General Objections, and
9 Objections to Plaintiffs' Definitions and Instructions. WDP further objects to this
10 Interrogatory as seeking highly-sensitive confidential business information. WDP
11 further objects to this Interrogatory as overly broad, unduly burdensome, not
12 proportional to the needs of this case, and not relevant to any party's claims or
13 defenses to the extent it seeks information regarding costs and expenses pre-dating
14 November 14, 2014. WDP further objects to this Interrogatory insofar as the phrase
15 "costs and expenses . . . for the Pirates of the Caribbean film" is vague and
16 ambiguous as to the categories of costs and expenses sought. WDP construes this
17 term to include The Curse costs and expenses incurred from domestic and
18 international theatrical, physical retail, electronic home video ("EHV"),
19 transactional video on demand ("TVOD"), pay TV, and free/basic TV distribution;
20 other non-theatrical revenues; distribution overhead; residuals; participation; and
21 production costs. WDP further objects that this Interrogatory calls for a legal
22 conclusion, is premature, and the subject of expert testimony.

23 Subject to and without waiving the foregoing objections, WDP responds as
24 follows: WDP directs Plaintiffs to the attached CONFIDENTIAL-ATTORNEYS
25 EYES ONLY Exhibit A, which shows WDP's costs and expenses incurred from
26 The Curse domestic and international theatrical, physical retail, electronic home
27 video ("EHV"), transactional video on demand ("TVOD"), pay TV, and free/basic
28 TV distribution; other non-theatrical distribution; distribution overhead; residuals;

1 participation; and production costs on an annual basis from October 2014 through
 2 the end of 2021.³ WDP's investigation is ongoing, and WDP reserves the right to
 3 supplement this response.

4
 5 **INTERROGATORY NO. 14:**

6 State Disney's costs and expenses on an annual basis for the Pirates of the
 7 Caribbean franchise.

8 **RESPONSE TO INTERROGATORY NO. 14:**

9 WDP incorporates its Prefatory Statement, General Objections, and
 10 Objections to Plaintiffs' Definitions and Instructions. WDP further objects to this
 11 Interrogatory as seeking highly-sensitive confidential business information for
 12 tactical advantage, rather than evidentiary value. WDP objects to the term "Pirates
 13 of the Caribbean franchise" on the ground that the term is vague and ambiguous to
 14 the extent it purports to include any work, product, film, book, sales, licensing, or
 15 royalties besides The Curse and Four Film Sequels. As defined, the term would
 16 encompass any "work, product, film, book, or similar" and any "sales, licensing, or
 17 royalties related thereto" created by anyone after 2003, whether or not related in
 18 any way to The Curse or WDP. WDP further objects to this Interrogatory as overly
 19 broad, unduly burdensome, not proportional to the needs of this case, and not
 20 relevant to any party's claims or defenses to the extent it seeks information
 21 regarding costs and expenses related to any works besides The Curse. Plaintiffs
 22 have not provided any facts to support any basis for claiming infringement for the
 23 Four Film Sequels or damages contentions sufficient to show the relevance of this
 24 Interrogatory. In response to WDP counsel's January 25, 2022 email request for
 25 information regarding the relevance of this and similar requests, Plaintiffs' counsel
 26 stated vaguely that these requests "relate to damages for Disney's infringement"
 27 and "relate[] to Disney's indirect profits." WDP further objects to this
 28 Interrogatory as overly broad, unduly burdensome, not proportional to the needs of

1 this case, and not relevant to any party's claims or defenses to the extent it seeks
 2 information regarding costs and expenses pre-dating November 14, 2014. WDP
 3 further objects to this Interrogatory insofar as "costs and expenses . . . for the
 4 Pirates of the Caribbean franchise" is vague and ambiguous as to the categories of
 5 costs and expenses sought. WDP further objects that this Interrogatory calls for a
 6 legal conclusion, is premature, and the subject of expert testimony.

7 Subject to and without waiving the foregoing objections, WDP responds as
 8 follows: WDP refers Plaintiffs to its response to Interrogatory No. 13 regarding
 9 costs and expenses for The Curse. With respect to costs and expenses information
 10 for any of the Four Film Sequels or any other works sought by this Interrogatory,
 11 WDP will not respond on the basis of its objections. WDP is willing to meet and
 12 confer with Plaintiffs regarding this Interrogatory.

13 14 **INTERROGATORY NO. 15:**

15 State Disney's contention as to any apportioned values of the Pirates of the
 16 Caribbean film, including a description of Disney's method for apportionment and
 17 an identification of any documents relating to that contention.

18 **RESPONSE TO INTERROGATORY NO. 15:**

19 WDP incorporates its Prefatory Statement, General Objections, and
 20 Objections to Plaintiffs' Definitions and Instructions. WDP further objects to this
 21 Interrogatory as seeking highly-sensitive confidential business information. WDP
 22 objects to the extent this request seeks any documents or information protected by
 23 the attorney-client privilege, the work-product doctrine, or any analogous privilege
 24 or protection from discovery. WDP further objects to this Interrogatory insofar as
 25 the phrases "any apportioned values of the Pirates of the Caribbean film" and
 26 "method for apportionment" are vague and ambiguous. WDP does not understand
 27 what is meant by these phrases. To the extent this Interrogatory asks WDP to state
 28 its position regarding the amount of any profits that should be apportioned to

1 allegedly infringing or non-infringing aspects of the Film, then WDP objects that
 2 this Interrogatory calls for a legal conclusion, is premature, and the subject of
 3 expert testimony. *Polar Bear Prods, Inc. v. Timex Corp.*, 384 F.3d 700, 711 (9th
 4 Cir. 2004). WDP further objects to this Interrogatory as overly broad, unduly
 5 burdensome, not proportional to the needs of this case, and not relevant to any
 6 party's claims or defenses to the extent it seeks information regarding "any
 7 apportioned values" of any profits pre-dating November 14, 2014.
 8 On the basis of its objections, WDP will not respond to this Interrogatory. WDP is
 9 willing to meet and confer with Plaintiffs regarding this Interrogatory.

11 **REQUEST FOR PRODUCTION NO. 23:**

12 Documents sufficient to show a detailed summary of costs and expenses on
 13 an annual basis relating to the *Pirates of the Caribbean* film.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 23:**

15 WDP incorporates its Prefatory Statement, General Objections, and
 16 Objections to Plaintiffs' Definitions and Instructions.⁵ WDP further objects to this
 17 Request as seeking highly-sensitive confidential business information. WDP
 18 further objects to this Request as overly broad, unduly burdensome, not
 19 proportional to the needs of this case, and not relevant to any party's claims or
 20 defenses to the extent it seeks information regarding costs and expenses pre-dating
 21 November 14, 2014. WDP further objects that the Request for a "detailed
 22 summary" is vague and ambiguous, because it is subject to multiple interpretations.
 23 WDP further objects to this Request on the ground that the phrase "relating to the
 24 *Pirates of the Caribbean* film" is vague and ambiguous as to the categories of costs
 25 and expenses sought. WDP construes this term to include *The Curse* costs and

26
 27 ⁵ For purposes of brevity, Plaintiffs have avoided repasting these components in this
 28 Section. The original text of Disney's Prefatory Statement, General Objections, and
 Objections to Plaintiffs' Definitions and Instructions are found *supra* in response to
 Issue 1.

1 expenses incurred from domestic and international theatrical, physical retail,
2 electronic home video

3 (“EHV”), transactional video on demand (“TVOD”), pay TV, and free/basic
4 TV distribution; other non-theatrical revenues; distribution overhead; residuals;
5 participation; and production costs.

6 Subject to and without waiving the foregoing objections, WDP responds as
7 follows: WDP directs Plaintiffs to the information provided in CONFIDENTIAL-
8 ATTORNEYS EYES ONLY Exhibit A to its Responses and Objections to
9 Plaintiffs’ First Set of Interrogatories, concurrently served herewith.

10
11 **REQUEST FOR PRODUCTION NO. 24:**

12 Documents sufficient to show a detailed summary of gross revenue on an
13 annual basis relating to the Pirates of the Caribbean film.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 24:**

15 WDP incorporates its Prefatory Statement, General Objections, and
16 Objections to Plaintiffs’ Definitions and Instructions. WDP further objects to this
17 Request as seeking highly-sensitive confidential business information. WDP
18 further objects to this Request as overly broad, unduly burdensome, not
19 proportional to the needs of this case, and not relevant to any party’s claims or
20 defenses to the extent it seeks information regarding gross revenue for The Curse
21 pre-dating November 14, 2014. WDP further objects that the Request for a
22 “detailed summary” is vague and ambiguous, because it is subject to multiple
23 interpretations. WDP further objects to this Request on the ground that the phrase
24 “relating to the Pirates of the Caribbean film” is vague and ambiguous as to the
25 categories of gross revenue sought. WDP construes this term to include The Curse
26 revenues derived from domestic and international theatrical, physical retail,
27 electronic home video (“EHV”), transactional video on demand (“TVOD”), pay
28 TV, free/basic TV distribution, and other non-theatrical distribution.

1 Subject to and without waiving the foregoing objections, WDP responds as
 2 follows: WDP directs Plaintiffs to the information provided in CONFIDENTIAL-
 3 ATTORNEYS EYES ONLY Exhibit A to its Responses and Objections to
 4 Plaintiffs' First Set of Interrogatories, concurrently served herewith.

5
 6 **REQUEST FOR PRODUCTION NO. 25:**

7 Documents sufficient to show a detailed summary of profits on an annual
 8 basis relating to the Pirates of the Caribbean film.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 25:**

10 WDP incorporates its Prefatory Statement, General Objections, and
 11 Objections to Plaintiffs' Definitions and Instructions. WDP further objects to this
 12 Request as seeking highly-sensitive confidential business information. WDP
 13 further objects to this Request as overly broad, unduly burdensome, not
 14 proportional to the needs of this case, and not relevant to any party's claims or
 15 defenses to the extent it seeks information regarding profits for the Film pre-dating
 16 November 14, 2014. WDP further objects that the Request for a "detailed
 17 summary" is vague and ambiguous, because it is subject to multiple interpretations.
 18 WDP further objects to this Request on the ground that the phrase "relating to the
 19 Pirates of the Caribbean film" is vague and ambiguous as to the categories of any
 20 profits sought. WDP construes this term to mean the net income from revenues
 21 derived from The Curse domestic and international theatrical, physical retail,
 22 electronic home video

23 ("EHV"), transactional video on demand ("TVOD"), pay TV, free/basic TV
 24 distribution, and other non-theatrical distribution, after taking into account costs
 25 and expenses incurred from The Curse domestic and international theatrical,
 26 physical retail, electronic home video ("EHV"), transactional video on demand
 27 ("TVOD"), pay TV, and free/basic TV distribution; other non-theatrical
 28 distribution; distribution overhead; residuals; participation; and production costs.

1 Subject to and without waiving the foregoing objections, WDP responds as
 2 follows: WDP directs Plaintiffs to the information provided in CONFIDENTIAL-
 3 ATTORNEYS EYES ONLY Exhibit A to its Responses and Objections to
 4 Plaintiffs' First Set of Interrogatories, concurrently served herewith.

5
 6 **REQUEST FOR PRODUCTION NO. 26:**

7 Documents sufficient to show a detailed summary of costs and expenses on
 8 an annual basis relating to the Pirates of the Caribbean franchise following the
 9 release of the Pirates of the Caribbean film, including without limitation, film
 10 sequels and merchandise.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 26:**

12 WDP incorporates its Prefatory Statement, General Objections, and
 13 Objections to Plaintiffs' Definitions and Instructions. WDP further objects to this
 14 Request as seeking highly-sensitive confidential business information for tactical
 15 advantage, rather than evidentiary value. WDP further objects to the term "Pirates
 16 of the Caribbean franchise" on the ground that the term is vague and ambiguous to
 17 the extent it purports to include any work, product, film, book, sales, licensing, or
 18 royalties besides The Curse and the Four Film Sequels. As defined, the term would
 19 encompass any "work, product, film, book, or similar" and any "sales, licensing, or
 20 royalties related thereto" created by anyone after 2003, whether or not related in
 21 any way to The Curse or WDP. WDP further objects to this Request as overly
 22 broad, unduly burdensome, not proportional to the needs of this case, and not
 23 relevant to any party's claims or defenses to the extent it seeks information
 24 regarding costs and expenses relating to any works or products besides The Curse.
 25 Plaintiffs have not provided any facts to support any basis for claiming
 26 infringement for the Four Film Sequels or damages contentions sufficient to show
 27 the relevance of this Request. In response to WDP counsel's January 25, 2022
 28 email request for information regarding the relevance of this and similar requests,

1 Plaintiffs’ counsel stated vaguely that these requests “relate to damages for
 2 Disney’s infringement” and “relate[] to Disney’s indirect profits.” WDP further
 3 objects to this Request as overly broad, unduly burdensome, not proportional to the
 4 needs of this case, not relevant to any party’s claims or defenses, and vague and
 5 ambiguous insofar as it seeks information regarding the costs and expenses
 6 “relating to . . . merchandise.” For the reasons stated above, Plaintiffs have not
 7 provided information regarding their damages contentions sufficient to show the
 8 relevance of this Request. WDP further objects to this Request as overly broad,
 9 unduly burdensome, not proportional to the needs of this case, and not relevant to
 10 any party’s claims or defenses to the extent it seeks information regarding costs and
 11 expenses pre-dating November 14, 2014. WDP further objects that the Request for
 12 a “detailed summary” is vague and ambiguous, because it is subject to multiple
 13 interpretations. WDP further objects to this Request on the ground that the term
 14 “relating to the Pirates of the Caribbean franchise” is vague and ambiguous as to
 15 the categories of costs and expenses sought.

16 On the basis of its objections, WDP will not produce documents in response
 17 to this Request.

18
 19 **REQUEST FOR PRODUCTION NO. 27:**

20 Documents sufficient to show a detailed summary of gross revenue on an
 21 annual basis relating to the Pirates of the Caribbean franchise following the release
 22 of the Pirates of the Caribbean film, including without limitation, film sequels and
 23 merchandise.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 27:**

25 WDP incorporates its Prefatory Statement, General Objections, and
 26 Objections to Plaintiffs’ Definitions and Instructions. WDP further objects to this
 27 Request as seeking highly-sensitive confidential business information for tactical
 28 advantage, rather than evidentiary value. WDP further objects to the term “Pirates

1 of the Caribbean franchise” on the ground that the term is vague and ambiguous to
2 the extent it purports to include any work, product, film, book, sales, licensing, or
3 royalties besides The Curse and Four Film Sequels. As defined, the term would
4 encompass any “work, product, film, book, or similar” and any “sales, licensing, or
5 royalties related thereto” created by anyone after 2003, whether or not related in
6 any way to The Curse or WDP. WDP further objects to this Request as overly
7 broad, unduly burdensome, not proportional to the needs of this case, and not
8 relevant to any party’s claims or defenses to the extent it seeks information
9 regarding gross revenues derived from any works or products besides The Curse.
10 Plaintiffs have not provided any facts to support any basis for claiming
11 infringement for the Four Film Sequels or damages contentions sufficient to show
12 the relevance of this Request. In response to WDP counsel’s January 25, 2022
13 email request for information regarding the relevance of this and similar requests,
14 Plaintiffs’ counsel stated vaguely that these requests “relate to damages for
15 Disney’s infringement” and “relate[] to Disney’s indirect profits.” WDP further
16 objects to this Request as overly broad, unduly burdensome, not proportional to the
17 needs of this case, not relevant to any party’s claims or defenses, and vague and
18 ambiguous insofar as it seeks information regarding gross revenues “relating to . . .
19 merchandise.” For the reasons stated above, Plaintiffs have not provided
20 information regarding their damages contentions sufficient to show the relevance of
21 this Request. WDP further objects to this Request as overly broad, unduly
22 burdensome, not proportional to the needs of this case, and not relevant to any
23 party’s claims or defenses to the extent it seeks information regarding gross revenue
24 pre-dating November 14, 2014. WDP further objects that the Request for a
25 “detailed summary” is vague and ambiguous, because it is subject to multiple
26 interpretations. WDP further objects to this Request on the ground that the term
27 “relating to the Pirates of the Caribbean franchise” is vague and ambiguous as to
28 the categories of revenues sought.

1 On the basis of its objections, WDP will not produce documents in response
2 to this request.

3
4 **REQUEST FOR PRODUCTION NO. 28:**

5 Documents sufficient to show Disney's internal accounting methods for the
6 Pirates of the Caribbean film and Pirates of the Caribbean franchise.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 28:**

8 WDP incorporates its Prefatory Statement, General Objections, and
9 Objections to Plaintiffs' Definitions and Instructions. WDP further objects to this
10 Request as seeking highly-sensitive confidential business information. WDP
11 further objects that the phrase "internal accounting methods" is vague and
12 ambiguous, because the phrase is subject to multiple interpretations. WDP does not
13 know what is meant by the phrase. WDP further objects to the term "Pirates of the
14 Caribbean franchise" on the ground that it is vague and ambiguous to the extent it
15 purports to include any work, product, film, book, sales, licensing, or royalties
16 besides The Curse and Four Film Sequels. As defined, the term would encompass
17 any "work, product, film, book, or similar" and any "sales, licensing, or royalties
18 related thereto" created by anyone after 2003, whether or not related in any way to
19 The Curse or WDP. WDP further objects to this Request as overly broad, unduly
20 burdensome, not proportional to the needs of this case, and not relevant to any
21 party's claims or defenses to the extent it seeks information regarding "internal
22 accounting methods" for any works or products besides The Curse. Plaintiffs have
23 not provided any facts to support any basis for claiming infringement for the Four
24 Film Sequels or damages contentions sufficient to show the relevance of this
25 Request. In response to WDP counsel's January 25, 2022 email request for
26 information regarding the relevance of this and similar requests, Plaintiffs' counsel
27 stated vaguely that these requests "relate to damages for Disney's infringement"
28 and "relate[] to Disney's indirect profits." WDP further objects to this Request as

1 overly broad, unduly burdensome, not proportional to the needs of this case, and
 2 not relevant to any party's claims or defenses to the extent it seeks information
 3 regarding "internal accounting methods" pre-dating November 14, 2014.

4 Subject to and without waiving the foregoing objections, WDP responds as
 5 follows: WDP agrees to meet and confer with Plaintiffs regarding the request for
 6 documents sufficient to show WDP's internal accounting methods for The Curse.
 7 On the basis of its objections, WDP will not produce documents in response to the
 8 request for documents sufficient to show its internal accounting methods for the
 9 "Pirates of the Caribbean franchise."

10
 11 **REQUEST FOR PRODUCTION NO. 29:**

12 Documents relating to any internal assessment, valuation, or analysis
 13 apportioning the value or profits of the Pirates of the Caribbean film or Pirates of
 14 the Caribbean franchise.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 29:**

16 WDP incorporates its Prefatory Statement, General Objections, and
 17 Objections to Plaintiffs' Definitions and Instructions. WDP further objects to this
 18 Request as seeking highly-sensitive confidential business information for tactical
 19 advantage, rather than evidentiary value. WDP further objects that the phrase
 20 "apportioning the value or profits" is vague and ambiguous. To the extent this
 21 Request asks WDP to produce documents sufficient to show its methodology for
 22 apportioning any profits to allegedly infringing or non-infringing aspects of The
 23 Curse or other works, then WDP objects that this Request calls for a legal
 24 conclusion, is premature, and the subject of expert testimony. Polar Bear Prods,
 25 Inc. v. Timex Corp., 384 F.3d 700, 711 (9th Cir. 2004). WDP further objects to the
 26 term "Pirates of the Caribbean franchise" on the ground that it is vague and
 27 ambiguous to the extent it purports to include any work, product, film, book, sales,
 28 licensing, or royalties besides The Curse and Four Film Sequels. As defined, the

term would encompass any “work, product, film, book, or similar” and any “sales, licensing, or royalties related thereto” created by anyone after 2003, whether or not related in any way to The Curse or WDP. WDP further objects to this Request as overly broad, unduly burdensome, not proportional to the needs of this case, and not relevant to any party’s claims or defenses to the extent it seeks information regarding “apportioning the value or profits” of any works or products besides The Curse. Plaintiffs have not provided any facts to support any basis for claiming infringement for the Four Film Sequels or damages contentions sufficient to show the relevance of this Request. In response to WDP counsel’s January 25, 2022 email request for information regarding the relevance of this and similar requests, Plaintiffs’ counsel stated vaguely that these requests “relate to damages for Disney’s infringement” and “relate[] to Disney’s indirect profits.” WDP further objects to this Request as overly broad, unduly burdensome, not proportional to the needs of this case, and not relevant to any party’s claims or defenses to the extent it seeks information regarding “apportioning the value or profits” pre-dating November 14, 2014.

On the basis of its objections, WDP will not produce documents in response to this Request.

B. Requested Relief

Plaintiffs request an Order overruling Disney’s objections to Interrogatories 11-15 and Requests for Production 23-29 and compelling Disney to produce documents and provide information regarding pre-2014 financial information about the original Pirates of the Caribbean film.

C. The Screenwriters’ Contentions and Points and Authorities

The Court should also overrule Disney’s refusal to produce pre-2014 financial information about the original Pirates of the Caribbean film. As a compromise, the Screenwriters offered to accept Disney’s summary information—a one page overview of revenue, costs, and profits—for the movie on an annual basis

1 from 2003-2014. Indeed, Disney produced this summary information from 2014
 2 onward on an attorneys-eyes-only basis. This information is relevant to the
 3 Screenwriters' damages calculation and analysis, and also to Disney's equitable
 4 estoppel defense.

5 As explained above, the Screenwriters will seek actual damages based on a
 6 hypothetical license and Disney's profits. The damages period for their claim starts
 7 in 2014. *See Petrella v. Metro-Goldwyn-Mayer, Inc.*, 134 S. Ct. 1962 (2014)
 8 (allowing damages three years before filing suit). But a damages period does not
 9 necessarily define the scope of discoverable information. "Hollywood accounting"
 10 is notoriously complex and subject to dispute. *See, e.g.*, Carol M. Kaplan, *Once*
 11 *More Unto the Breach, Dear Friends: Broadway Dramatists, Hollywood*
 12 *Producers, and the Challenge of Conflicting Copyright Norms*, 16 Vand. J. Ent. &
 13 Tech. L. 297, 330 n.149 (2014) ("There is a raft of literature in the form of books,
 14 articles, personal accounts, and scholarly overviews, of so-called 'Hollywood
 15 accounting' practices by film studios and its effect on 'net profits' participations.").
 16 For that reason, any competent expert analysis will require due diligence to verify
 17 that the information from 2014 onward is accurate and comprehensive. *See*
 18 *generally id.* (collecting examples where films earned over \$500 million, "but
 19 studio accounting still shows them as 'in the red'"). For instance, the Screenwriters
 20 cannot evaluate how Disney has accounted for costs and expenses after 2014
 21 without the ability to review and audit that same information before 2014.

22 Disney's financial success from the Pirates of the Caribbean film over 2003-
 23 2014 also refutes its equitable estoppel defense. Disney must prove detrimental
 24 reliance to prove its equitable estoppel defense. *See, e.g.*, *Hadady Corp. v. Dean*
 25 *Witter Reynolds, Inc.*, 739 F. Supp. 1392, 1399 (C.D. Cal. 1990); *Petrella v. Metro-*
 26 *Goldwyn-Mayer, Inc.*, 134 S. Ct. 1962, 1977 (2014) (requiring "consequent loss"
 27 for equitable estoppel). Disney's financial success from the film is relevant
 28 evidence on this element. Far from any sort of loss, the evidence will show that

1 Disney profited handsomely over the years that Disney allegedly relied on some
 2 unidentified misrepresentation. Thus, the Court should compel Disney to produce
 3 its pre-2014 financial information.

4 **D. Defendant's Contentions And Points And Authorities**

5 Plaintiffs demand *ten years* of irrelevant financial data showing the revenues,
 6 expenses, costs, and profits for *Curse* outside the limitations period. Gesturing
 7 vaguely at concerns about "Hollywood accounting," Plaintiffs claim they need this
 8 information for purposes of confirming the accuracy of WDP's financial data
 9 within the limitations period. But Plaintiffs are unable to offer any case authority
 10 or rationale to justify this extraordinary demand, and they do not point to any
 11 accounting irregularities in the existing data that WDP has produced.

12 **1. Plaintiffs' Demand For Financial Discovery Outside The** 13 **Applicable Limitations Period Is Presumptively Improper**

14 Plaintiffs concede, as they must, that their copyright claim is subject to a
 15 three-year statute of limitations and that they therefore cannot recover damages
 16 before November 2014. *See Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663,
 17 671, 672, 677 (2014); *Roley v. New World Pictures, Ltd.*, 19 F.3d 479, 481 (9th Cir.
 18 1994). Nevertheless, they move to compel *all* revenue, expense, cost, and profit
 19 information for *Curse* stemming all the way back to its release in 2003, claiming
 20 that "a damages period does not necessarily define the scope of discoverable
 21 information."

22 Plaintiffs cite no case law to support this argument. This is not surprising as
 23 the limitations period places a presumptive limit on the scope of discovery under
 24 Rule 26(b)(1). *See, e.g., Oppenheimer Fund*, 437 U.S. at 351–52 ("it is proper to
 25 deny discovery of matter that is relevant only to ... events that occurred before an
 26 applicable limitations period," as discovery "not 'reasonably calculated to lead to
 27 the discovery of admissible evidence'" within the meaning of Rule 26(b)(1)); *see*
 28 *also* 8 Richard L. Marcus, *Federal Practice and Procedure Civil* § 2008.5 (3d ed.

1 2021).

2 Barring discovery of financial information pre-dating the applicable
3 limitations period is likewise consistent with the purposes served by the statute of
4 limitations governing copyright claims. As the Supreme Court explained in
5 *Petrella v. Metro-Goldwyn-Mayer, Inc.*, “infringement is actionable within three
6 years, and only three years, of its occurrence. And the infringer is insulated from
7 liability for earlier infringements of the same work.” 572 U.S. at 671. “[W]hen a
8 defendant has engaged (or is alleged to have engaged) in a series of discrete
9 infringing acts, the copyright holder’s suit ordinarily will be timely under § 507(b)
10 with respect to more recent acts of infringement (i.e., acts within the three-year
11 window), but untimely with respect to prior acts of the same or similar kind.” *Id.* at
12 672. Allowing Plaintiffs to take wide-ranging discovery into revenue, costs, and
13 profits for a period of over ten years *prior* to the limitations period here would
14 undermine the Copyright Act’s purpose of encouraging the timely filing of suits
15 and insulating defendants from liability for conduct outside the limitations period.
16 It was *Plaintiffs* who elected to postpone the filing of their complaint for nearly
17 fifteen years, thereby forfeiting any claim to damages before 2014. Plaintiffs must
18 live with the consequences of that decision.

19 **2. Plaintiffs’ Vague “Hollywood Accounting” Theory Does Not** 20 **Justify The Requested Discovery**

21 Plaintiffs argue that they should be entitled to “summary information”
22 relating to revenue, costs, and profits for *Curse* from 2003–2014 because
23 “Hollywood accounting” is “notoriously complex” and Plaintiffs wish to “verify”
24 the post-2014 financial information WDP has produced.

25 Unsurprisingly, Plaintiffs cite no case law to support this argument
26 either. Nor is there any substance to it. Plaintiffs do not identify any accounting
27 problem or inconsistency in the data that WDP has provided for the November
28 2014-to-present period. Nor do Plaintiffs explain how, as a practical matter,

1 producing summary-level data showing revenue, expenses, costs, and profit totals
2 could enable an expert to “verify” the financial information that WDP produced.
3 Plaintiffs’ attention-grabbing invocation of “Hollywood accounting” is a
4 transparent excuse to extract financial information of *Curse*’s pre-2014 success, and
5 it has no relevance to Plaintiffs’ limited damages theories in this case.

6 **3. WDP Is Not Relying On Any “Consequent Loss” Occurring**
7 **Outside The Limitations Period, And So The Discovery Is**
8 **Not Relevant To WDP’s Equitable Estoppel Defense**

9 WDP’s equitable estoppel affirmative defense does not justify Plaintiffs’ far-
10 reaching discovery. WDP does not intend to rely for its defense on any evidence
11 regarding its financial “consequent loss” that occurred outside the statute of
12 limitations period. There is, therefore, no justification for Plaintiffs to obtain
13 financial information for *Curse* outside the statute of limitations period.

14 **4. WDP’s Proposed Resolution**

15 During meet and confer, Plaintiffs offered to accept WDP’s summary
16 information—a one-page overview of revenue, expenses, costs, and profits—for
17 *Curse* on an annual basis from 2003–2014. WDP did not agree to this improper
18 proposal for the reasons stated above. Yee Decl. ¶ 10.

19 WDP believes this Court should deny Plaintiffs’ motion in its entirety. If this
20 Court is inclined to grant the motion, then WDP would provide, on an AEO basis,
21 the summary-level financial information that Plaintiffs have agreed to accept on an
22 annual basis for the years 2003–2014.

1 Dated: March 24, 2022

Respectfully submitted,

2 By: /s/ Patrick M. Arenz

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4 Patrick M. Arenz (pro hac vice)

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7 Steven T. Lowe, Esq.

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9 *Attorneys for Plaintiffs*

Arthur Lee Alfred, II, et al.

10 DATED: March 24, 2022

MUNGER, TOLLES & OLSON LLP

11 By:

12 
Attorneys for Defendant Walt Disney Pictures